
FYI-105

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

GROSS RECEIPTS & COMPENSATING TAXES: AN OVERVIEW

July 1, 2010 - June 30, 2011

Taxpayers should be aware that subsequent legislation, regulations, court decisions, revenue rulings, notices and announcements may affect the accuracy of this publication's contents. Please contact the district tax office nearest you (see the last page of this publication) or check the Department's web site at www.tax.state.nm.us/. Click on "publications."

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INTRODUCTION

This publication includes a description of gross receipts and compensating taxes; exemptions, deductions and credits available for each tax; how and when to report and pay the taxes; account notices issued by the Department; and, finally, responses to common questions asked by taxpayers. Because these instructions are intended to provide general guidance and do not address all specific circumstances, they are not binding on the Department. If you have any questions regarding your particular situation, please contact one of the Department's local tax offices or the Santa Fe headquarters.

Statutory citations in this publication are to the New Mexico Statutes Annotated (NMSA 1978). The Gross Receipts and Compensating Tax Act is compiled as Sections 7-9-1 through 7-9-113 NMSA 1978.

"CRS" is the Taxation and Revenue Department's Combined Reporting System. Using the Combined Reporting System you can report one or more of the following taxes:

1. Gross Receipts Tax (includes municipal and county taxes)
2. Compensating Tax
3. Withholding Tax*
4. Governmental Gross Receipts Tax
5. Interstate Telecommunications Gross Receipts Tax (for more information request FYI-403 from your local district tax office or view it online at www.tax.state.nm.us/)
6. Leased Vehicle Gross Receipts Tax (for more information request FYI-225 from your local district tax office or view it online at www.tax.state.nm.us/)
7. Leased Vehicle Surcharge
8. Tribal Taxes

* A description of withholding tax is included in the withholding tax table section of the CRS-1 Filer's Kit and in FYI-104 available from your local district tax office. You may view it online at: www.tax.state.nm.us/.

The form used to report these taxes is the CRS-1 Form. A supply of these forms is available in the CRS-1 Filer's Kit. The kit is mailed out every six months in June and December to all registered taxpayers who do not file online and contains a six-month supply of CRS-1 Forms, current gross receipts tax rates, withholding tax tables, and frequently requested CRS-related forms. If you did not receive your CRS-1 Filer's Kit, contact your local district tax office (see FOR FURTHER ASSISTANCE on page 49).

GOVERNMENTAL GROSS RECEIPTS TAX

A governmental gross receipts tax of 5% is imposed on the receipts of New Mexico state and local governments (except public school districts and hospitals) from:

1. The sale of tangible personal property, other than water, from facilities open to the general public;
2. The performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;
3. Refuse collection, refuse disposal, or both;
4. Sewage services;
5. The sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state, and

6. The renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft or dock boats (7-9-4.3).

For governmental gross receipts purposes a “facility open to the general public” DOES NOT include point-of-sale registers or electronic devices at a bookstore owned or operated by a public post-secondary educational institution when the registers or devices are utilized in the sale of textbooks or other materials required for courses at the institution to a student or other materials required for courses at the institution to a student enrolled at the institution who displays a valid student identification card.

Exemptions From Governmental Gross Receipts Tax

Receipts subject to one of the following taxes are exempt from governmental gross receipts tax: gross receipts tax; compensating tax; motor vehicle excise tax; gasoline tax; special fuel supplier's tax; the oil and gas emergency school, severance, conservation and ad valorem taxes; resources tax; processors tax; service tax; event center surcharge (7-9-13.5); stadium surcharge (7-9-13.3); athletic facility surcharge (7-9-41.1) or the boat excise tax (7-9-13.2). In addition, receipts from the sale of livestock or unprocessed agricultural products are exempt (7-9-18).

Deductions From Governmental Gross Receipts Tax

Deductions that can be claimed under governmental gross receipts are:

1. Receipts from selling tangible personal property to manufacturers (7-9-46);
2. Receipts from sales of tangible personal property or licenses for resale (including prosthetic devices) (7-9-47 and 7-9-73);
3. Receipts from sales of prescription drugs, oxygen and oxygen services provided by a licensed Medicare durable medical equipment provider (7-9-73.2);
4. Receipts from selling tangible personal property to a U.S. or New Mexico governmental entity or to the governing body of an Indian nation, tribe or pueblo for use on the reservation (7-9-54);
5. Receipts from selling tangible personal property to 501(c)(3) organizations (7-9-60);
6. Receipts from sale of services for resale (7-9-48);
7. Receipts from sales in interstate commerce (7-9-55);
8. Refunds and uncollectible debts (7-9-67), and
9. Receipts from selling tangible personal property to state-chartered credit unions (7-9-61.2)

For further information on these deductions, please see Deductions from Gross Receipts Tax beginning on page 12.

Although the governmental gross receipts tax is included in the Gross Receipts and Compensating Tax Act and reportable in the same fashion as gross receipts and compensating taxes, it is an entirely separate tax. The location code used by government agencies for reporting purposes is 55-055.

LEASED VEHICLE GROSS RECEIPTS TAX AND LEASED VEHICLE SURCHARGE

In addition to gross receipts tax, a leased vehicle gross receipts tax of 5% is imposed on the receipts of a lessor of automobiles when:

1. The lease is for a term of six months or less;
2. The automobile is part of a fleet of five or more leased vehicles;
3. The vehicle is a passenger automobile that will accommodate six or fewer adults; and
4. The lessor acquired the automobile on or after July 1, 1991.

A \$2-per-day leased vehicle surcharge is also imposed on certain vehicle leases. Report the regular gross receipts tax, the leased vehicle gross receipts tax and the leased vehicle surcharge on the CRS-1 Form. The location code for leased vehicle gross receipts tax is 44-444, and the location code for the leased vehicle surcharge is 44-455. Also see FYI-225 available from your local district tax office or view it online: www.tax.state.nm.us/.

TRIBAL TAXES

The Taxation and Revenue Department has entered into agreements with the Santa Clara, Santa Ana, Nambe, Laguna, Pojoaque, Sandia, Cochiti, Kewa, Ohkay Owingeh, Taos, and Picuris Pueblos and the Jicarilla Apache Nation to collect a tax imposed by these tribes. The Taxation and Revenue Department has also entered into a cooperative agreement with the Albuquerque Indian School Governing Board. These agreements also provides for mutual credits to prevent the total state (including local option taxes) and tribal taxes imposed on a taxpayer from exceeding the amount either government imposes.

The Department is authorized to enter into similar agreements with all nineteen New Mexico Pueblos and the Mescalero Apache Tribe.

GROSS RECEIPTS TAX

What is Gross Receipts?

"Gross receipts" means the total amount of money or other consideration received from selling property in New Mexico, leasing or licensing property employed in New Mexico, granting a right to use a franchise employed in New Mexico, performing services in New Mexico or selling research and development services performed outside New Mexico the product of which is initially used in New Mexico. Gross receipts includes receipts from:

1. Sales of tangible personal property handled on consignment;
2. Commissions received;
3. Amounts paid by members of any cooperative association;
4. Amounts received by persons providing telephone or telegraph services;
5. Fees received by persons for serving as disclosed agents for another;
6. Amounts received by a New Mexico florist from the sale of flowers, plants, etc., that are filled and delivered outside New Mexico by an out-of-state florist, and
7. Providing intrastate mobile telecommunications services (i.e., the services originate and terminate in the same state) to customers whose place of primary use is in New Mexico.

Gross receipts **DOES NOT** include:

1. Tax billed to the buyer (i.e., gross receipts tax, governmental gross receipts tax, leased vehicle gross receipts tax, interstate telecommunications gross receipts tax and local option taxes).

◆ Example: When the seller passes tax to the buyer, the seller should separate, or “back out”, that tax from the total income to arrive at "Gross Receipts," the amount reported in Column D of the CRS-1 Form. (Please see the example on page 45.)

2. Cash discounts allowed and taken.

◆ Example: When a seller offers 2% off for paying cash or for paying within a certain time frame and the buyer takes advantage of the offer, the gross receipts amount is the amount actually received (sales price less 2%). Manufacturers' coupons redeemable by the seller, such as a grocery store, are not cash discounts allowed and taken since the seller will be reimbursed for the face value of the coupon. Gross receipts includes cash received plus the value of the coupon.

3. Gross receipts or sales tax imposed by an Indian nation, tribe or pueblo if the Indian nation, tribe or pueblo has a similar exclusion for New Mexico gross receipts tax.

4. Any type of time-price differential, such as interest or a reduced sale price for pay.

5. Amounts received solely on behalf of another in a disclosed agency capacity.

6. Amounts received by a New Mexico florist from the sale of flowers, plants, *etc.*, where the sale results from orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.

What is the Gross Receipts Tax?

The gross receipts tax is a tax on persons engaged in business in New Mexico for the privilege of doing business in New Mexico. The tax is imposed on the gross receipts of persons who:

1. Sell property in New Mexico;

◆ Property includes real property; tangible personal property, including electricity and manufactured homes, licenses (other than the licenses of copyrights, trademarks or patents) and franchises.

2. Perform services in New Mexico;

◆ Service includes construction activities and all construction materials that will become part of the construction project.

3. Lease or license property employed in New Mexico;

4. Grant a right to use a franchise employed in New Mexico;

5. Sell research and development services performed outside New Mexico when the product of the service is initially used in New Mexico.

What is the Gross Receipts Tax Rate and How is it Determined?

The gross receipts tax rate varies throughout the state from 5.125% to 8.6875%. The total rate is a combination of the rates imposed by:

1. The state,

2. The counties, and
3. The municipalities.

The total gross receipts tax is paid to the state. The state keeps its portion and distributes the counties' and municipalities' portions to them.

The state's portion of the gross receipts tax, which is also the largest portion of the tax, is determined by state law. Changes to the state rate occur no more than once a year, usually in July.

The counties' portion of gross receipts tax is determined by the county commissions. These increments can go into effect in January and July of every year.

Municipal councils determine the municipalities' portion of gross receipts tax. Like the counties, changes can go into effect in January and July of every year.

Because the combined gross receipts tax rate can change effective January and July of every year, we issue a new tax rate schedule twice a year and include it in the CRS-1 Filer's Kit. You can also view the tax rate schedule online: www.tax.state.nm.us/. Always check the gross receipts tax rate schedule to see if the rate for your business location(s) has changed. Due to the frequency of tax rate changes, the Department does not send out separate notices of those changes.

Business Location Determines Tax Rate

Generally, the gross receipts tax rate is based on the business location of the seller or lessor, **NOT** on the location of the buyer or lessee. If your business is located in Albuquerque and you deliver or lease to someone in Santa Fe, you are liable for tax at the Albuquerque rate.

For reporting purposes, business locations are broken down by county and municipality on the tax rate schedule. Here are some guidelines for determining your business location:

1. If you are in the construction business, your tax rate is determined by the location of each construction project;
2. If you are in the business of selling real estate, your business location is the location of each property sold;
3. If you are a utility, your tax rate is determined by the location of the meter used to record the amount of service consumed by the customer or the location of the telephone set. For cellular service, it is the location of the customer's place of primary use;
4. If you are located in a municipality within a county, your rate is that of the municipality;
5. If you are outside any incorporated municipality, your rate is that of the county;
6. If you have more than one store within one municipality or county, i.e., three stores in Las Cruces, you have only one business location (Las Cruces) for reporting purposes;
7. If you have no business location in New Mexico but you have a resident salesperson, your business location is the location of the salesperson;

8. If you have no business location or resident salesperson but are liable for gross receipts tax (for instance, because you lease property used in New Mexico or perform a non-construction service in New Mexico), you are liable for tax at the rate for out-of-state businesses, the state gross receipts tax rate of 5.125%. Use the out-of-state business location code, 88-888;
9. If you have multiple business locations under one identification number, you should report the receipts for each location separately on a single CRS-1 Form and be sure the tax rate matches the location by checking the gross receipts tax rate schedule;
10. If you are a craftsperson who sells at craft fairs where you rent a booth, because you can be expected to be found at the booth for the duration of the fair, that booth is a business location and your tax rate is based on the location of the crafts fair;
11. If you are located outside New Mexico and sell research and development services the product of which is initially used in New Mexico, use the state rate, 5.125%. Use the special business location code of 77-777 for those transactions only;
12. In some counties, more than one location code exists for land owned by a municipality but located in that part of the county outside all municipalities. Examples: State Fairgrounds in Bernalillo County and Taos Airport in Taos County. Use the codes for these specific areas when your location is in one of them, and
13. If you transact business with tribal non-members on tribal territory, use the tribal location of the sale or delivery rather than your principle business location if that tribe or pueblo has entered into a cooperative agreement with New Mexico. Evidence that a tribe or pueblo has entered into a cooperative agreement is a separate location listing on the *Gross Receipts Tax Rate Schedule*.

Determining Taxability of Gross Receipts

Gross receipts are taxable, exempt or deductible. If your receipts do not fall under any exemption or deduction, those receipts are taxable. The exemptions and deductions from gross receipts tax that follow are grouped in categories, *i.e.*, agriculture, construction, government entity, for convenient reference. Where helpful, we have included an example of the application of the exemption or deduction. In cases where an exception to qualifying for the exemption or deduction exists, we have included the exception. Please refer to the Gross Receipts and Compensating Tax Act regulations for specifics on exemptions and deductions from gross receipts tax. A regulation book can be obtained from the New Mexico Compilation Commission, <http://www.nmcompcomm.us/index.html>.

Exemptions from Gross Receipts Tax

What Is an Exemption?

Exemptions from gross receipts tax are receipts which are not taxable and do not have to be reported. If all your receipts are exempt, you do not have to register with the Department for gross receipts tax purposes (you may have to register for withholding tax or to obtain nontaxable transaction certificates, though) nor do you have to report those receipts on the CRS-1 Form. If you have exempt, deductible and taxable receipts, you should register and report only the deductible and taxable receipts on the CRS-1 Form. For administrative purposes, receipts on which no state tax may be imposed because of federal preemption are considered exempt.

Federal Preemption

In some cases, federal law bars New Mexico from imposing its tax on transactions, which, but for the preemption, would be subject to tax. For example, federal law prohibits the application of state and local gross receipts tax to many transactions with Indian nations, tribes or pueblos or their agencies or members if the transaction takes place on the tribe's territory. Receipts from transactions with non-members, even when on a tribe's territory, are not preempted. If you are uncertain whether preemption applies to your transaction(s), contact the Department.

◆ **NOTE:** This preemption does not apply to taxes imposed by an Indian nation, tribe or pueblo.

New Mexico is also preempted from imposing:

1. Gross receipts tax on receipts of Job Corps contractors from operating any Job Corps center, program or activity;
2. Local option gross receipts taxes on receipts of a provider of direct satellite service from providing direct satellite service, and
3. Gross receipts tax on receipts of federal and state credit unions.

List of Exemptions

The following receipts are exempt from the gross receipts tax:

Agricultural Exemptions

1. Receipts from selling livestock or horses and the receipts of growers, producers and trappers from selling live poultry, unprocessed agricultural products (for example, a bale of hay, a head of lettuce or an unroasted sack of green chili), hides or pelts (7-9-18).
 - ◆ Exception: receipts from selling dairy products at retail are not exempt.
 - ◆ **NOTE:** this exemption also applies to governmental gross receipts tax.
2. Receipts of persons from feeding or pasturing livestock (7-9-19).
 - ◆ Example: penning, handling or training livestock.

Athletic Facility Surcharge Exemption

Receipts of a university from an athletic facility surcharge imposed pursuant to the University Athletic Facility Funding Act (7-9-41.1).

Disabled Street Vendor Exemption

Receipts of disabled street vendors from the sale of goods (7-9-41.3).

Food Stamp Exemption

Receipts of retailers from the redemption of food stamps (7-9-18.1).

Governmental Entity Exemptions

1. Receipts of the federal government, State of New Mexico, or any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory, or any agency or political subdivision of the

foregoing; for example: New Mexico cities, counties and public schools. Receipts of any foreign nation are exempt when exemption is required by a treaty to which the United States is a party (7-9-13).

- ◆ Exception: receipts of political subdivisions of the state from owning or operating a gas or electric utility or a municipal cable television system are not exempt.
- ◆ **NOTE:** certain receipts of the state and its subdivisions may be subject to governmental gross receipts tax (see page 2).

2. Receipts of instrumentalities of the armed forces of the United States (7-9-31).

- ◆ Example: receipts of base exchanges or post exchanges.
- ◆ Exception: receipts of a concessionaire operating on a military base or federal area are not exempt.

3. Sales to Indian nations, tribes, or pueblos, or to their members, are exempt if the transaction takes place on the tribe's territory (see "Federal Preemption" on page 8).

Insurance Company and Bail Bondsman Exemption

Receipts of insurance companies or their agents from premiums and receipts of property bondsmen from security for a bail bond (7-9-24).

Interest and Dividend Exemption

Interest on money loaned or deposited; dividends or interest from stocks, bonds or securities; and receipts from the sale of stocks, bonds or securities (7-9-25).

Interstate Telecommunications Services Exemption

Receipts from selling or providing interstate telecommunications services (7-9-38.1).

- ◆ **NOTE:** these services are subject to the interstate telecommunications gross receipts tax.

Isolated or Occasional Sale Exemption

Receipts from the isolated or occasional sale or leasing of property or service by a person who is not in the business of selling or leasing the same or similar property or service (7-9-28).

Mobile Telecommunications Services Exemption

Receipts of a home service provider from providing mobile telecommunications services to persons whose place of primary use is outside New Mexico, regardless of where the mobile telecommunications services originate, terminate or pass through (7-9-38.2).

Municipal Event Center Surcharge Exemption

Receipts from selling tickets, parking, souvenirs, concessions, programs, advertising, merchandises, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a municipal event center on which an event center surcharge is imposed pursuant to the Municipal Event Center Funding Act (7-9-13.5).

Nonprofit Organization Exemptions

1. Receipts of nonprofit entities from operating facilities designed and used for providing accommodations for retired elderly persons (7-9-16).

2. Receipts of 501(c)(3) organizations and receipts of 501(c)(6) organizations from conducting chamber of commerce, visitor bureau and convention bureau activities (7-9-29).
◆ Exception: receipts from an unrelated trade or business are taxable.
3. Receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues (7-9-39).
◆ **NOTE:** 501(c)(4) civic leagues, civic organizations and social welfare organizations are social organizations and included in this exemption.
4. Receipts of a minister of a 501(c)(3) religious organization from performing religious services (7-9-41).
5. Receipts of homeowners' associations from membership fees, dues and assessments from owner-members to be used for tax, insurance and maintenance expenses for commonly owned areas and facilities (7-9-20).

Oil, Natural Gas and Mineral Exemptions

1. Oil, natural gas or liquid hydrocarbons and helium and other non-hydrogen gases subject to the Oil and Gas Emergency School Tax Act that are sold for resale, for consumption outside New Mexico or for use as an ingredient or component part of a manufactured product (7-9-33).
2. Natural gas or liquid hydrocarbons and helium and other non-hydrogen gases subject to the Natural Gas Processors Tax Act that are sold for resale, for consumption outside New Mexico or for use as an ingredient or component part of a manufactured product (7-9-34).
3. Natural resources subject to the Resources Excise Tax Act that are sold for resale or for use as an ingredient or component part of a manufactured product (7-9-35).
4. Receipts from the sale or lease of oil, natural gas or mineral interests (7-9-32).
5. Receipts from the sale of oil, natural gas or liquid hydrocarbons consumed as fuel in the pipeline transportation of such products (7-9-36).

Out-of-State Services Exemption

Receipts from services performed outside the state when the product of the service is initially used in New Mexico (7-9-13.1).

- ◆ Exception: receipts from performing a research and development service are not exempt unless the service is: sold between affiliated corporations; sold to the United States government by operators of national laboratories (other than 501(c)(3) organizations); or sold to persons (other than 501(c)(3) organizations) operating national laboratories.

Racetrack Exemption

Receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks and receipts of racetracks from gross amounts wagered (7-9-40).

School Event Services Exemption

Receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico Activities Association (7-9-41.4).

Stadium Exemption

Receipts from selling tickets, parking, souvenirs, concessions, programs, advertising merchandise, corporate suites or boxes, broadcast revenues and all other products, services or activities sold at, related to or occurring at a minor league baseball stadium on which a stadium surcharge is imposed under the Minor League Baseball Stadium Funding Act (7-9-13.3).

Textbook Exemption

Receipts of certain bookstores from selling textbooks and other materials required for courses at a public post-secondary educational institution to a student enrolled at the institution (7-9-13.4).

- ◆ Requirement: bookstore must be located on the campus of the institution and operated by contract with the institution.
- ◆ Requirement: the student must present a valid student identification card.

Vehicle, Boat and Fuel Exemptions

1. Receipts from selling vehicles subject to the motor vehicle excise tax and vehicles exempt from the motor vehicle excise tax pursuant to Section 7-14-6 NMSA 1978 (7-9-22).
 - ◆ Exception: the sale of manufactured homes is subject to tax.
2. Receipts from selling boats subject to the boat excise tax (7-9-22.1).
3. Receipts from sales of gasoline, special fuel or alternative fuel on which the gasoline, special fuel excise or alternative fuel excise tax has been paid and not refunded (7-9-26).
4. Receipts from selling fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate vehicle launchers (7-9-26.1).
5. Receipts from selling fuel to a common carrier to be loaded or used in a locomotive engine (7-9-110).
 - ◆ **NOTE:** This exemption was to become effective July 1, 2010, if the Economic Development Department would have certified to the Taxation and Revenue Department by January 1, 2010, that construction of a railroad locomotive refueling facility project had commenced. Such a certification from the Economic Development Department was never received by the Taxation and Revenue Department; as a result this exemption is not currently available.

Wage Exemption

Receipts of employees from wages and salaries (7-9-17).

- ◆ **NOTE:** commissions received as an employee are also exempt.

Deductions From Gross Receipts Tax

What Is a Deduction?

A deduction from gross receipts, like an exemption, results in an amount not subject to tax. Unlike an exemption, **YOU MUST REPORT ON THE CRS-1 FORM BOTH THE GROSS RECEIPTS RECEIVED (in Column D) AND THE AMOUNT OF DEDUCTIONS YOU ARE ELIGIBLE TO CLAIM AGAINST THOSE GROSS RECEIPTS (in Column E).**

Substantiation Required to Support a Deduction

The Department requires taxpayers to retain substantiation in their records when claiming a deduction from gross receipts. That substantiation can be one of the following, depending on the deduction being claimed:

1. Nontaxable transaction certificate (see description below).
2. Farmer or rancher statement – a signed statement from a farmer or rancher declaring that the person is regularly engaged in the business of farming or ranching (used for agricultural deductions under Sections 7-9-58 and 7-9-62).
3. Jewelry manufacturer statement – a written statement declaring the purchaser is engaged in the business of manufacturing jewelry and will use the property purchased in manufacturing jewelry (used only for jewelry manufacturing deduction under Section 7-9-74).
4. Out-of-state buyer certificate, Type NTTC-OSB (see description on page 13).
5. Border state certificate, Type BSC (see description on page 13).
6. Multijurisdiction uniform sales and use tax certificate, Type MTC (see description on page 14).
7. Solar energy deduction written statement – a written statement declaring the equipment or services purchased are for the exclusive use in the installation or operation of a solar energy system (use only for solar energy systems deduction; 7-9-112)
8. Other documents including invoices, purchase orders, contracts, etc. but only when an NTTC is not required. These documents cannot be used in place of NTTCs.

Nontaxable Transaction Certificate (NTTC)

The NTTC is the only acceptable substantiation for certain deductions. The buyer obtains an NTTC from the Department to give to a seller. The NTTC entitles the seller to deduct those receipts when determining taxable gross receipts. In practice, this means the buyer is able to purchase goods and services free of the gross receipts tax that is usually passed on to the buyer. The seller must accept an NTTC in “good faith”, reasonably confident that the buyer issuing the NTTC will use the property or service in the manner stated on the NTTC. The seller needs only ONE NTTC from each buyer to cover all transactions of the same type with that buyer. Resale certificates issued by other states are not valid in New Mexico.

All taxpayers who wish to execute NTTCs are required to: 1) register with the Taxation and Revenue Department, and 2) complete the *Application for Nontaxable Transaction Certificates* or 3) request

NTTCs online at: <https://ec3.state.nm.us/nttcnet/tplogon.aspx>. The Department may refuse to issue NTTCs to delinquent taxpayers until the delinquency is cleared. The taxpayer may request additional NTTCs as needed.

Effective January 1, 2004, the types of NTTCs were consolidated as follows:

- The Type 2 NTTC is good for transactions formerly requiring a Type 1, 2, 3 or 4 NTTC.
- The Type 5 NTTC is good for transactions formerly requiring a Type 5, 8 or 13 NTTC.
- The Type 6 NTTC is good for transactions formerly requiring a Type 6 or 7 NTTC.
- The Type 9 NTTC is good for transactions formerly requiring a Type 9 or 14 NTTC.
- The Type 15 NTTC remains as is.
- The Type 16 is good for transactions formerly requiring a Type 16 or Type D NTTC.
- The Type NTTC-OSB remains as is.

The Department no longer issues Type 1, 3, 4, 7, 8, 13, 14 or D NTTCs. However, the Department will continue to recognize those NTTC types in audit situations when the seller has accepted the NTTCs in good faith, with reasonable confidence that the buyer executing the NTTC will use the property or service in the manner stated on the NTTC.

Type NTTC-OSB

Unlike other NTTCs, which are obtained from the Department by the buyer, the Type NTTC-OSB must be obtained by the seller. The New Mexico seller completes the Application for Nontaxable Transaction Certificates and the seller then provides the NTTC-OSBs to their out-of-state customers who:

- 1) are purchasing tangible personal property either for resale or for use as an ingredient or component part of a manufactured product; or
- 2) are purchasing a manufacturing service to be performed directly upon tangible personal property the purchaser is in the business of manufacturing, or upon ingredient or component parts of that manufactured product.

The buyer must provide all the required information on an NTTC-OSB and give it to the New Mexico seller who will keep it on file along with all other NTTCs the seller receives. The documentation requirements for accepting NTTC-OSBs should be carefully observed. See Out-of-State Buyer deduction on page 22 for those requirements.

Border State Certificate

New Mexico sellers may accept the Border State Certificate (BSC) from out-of-state buyers from Arizona, California, Oklahoma, Texas, Utah and the United States of Mexico not required to register in New Mexico but who:

- 1) wish to buy goods for resale or incorporation as ingredients or components of a manufactured product; or
 - 2) wish to buy a manufacturing service that will be performed on a manufactured product or an ingredient or component part thereof, and
 - 3) will transport the tangible personal property across state or national boundaries.
- ◆ **NOTE:** BSCs are not issued by New Mexico.

Multijurisdiction Uniform Sales and Use Tax Certificate

New Mexico sellers may accept the Multijurisdiction Uniform Sales and Use Tax Certificate (MTC) from out-of-state buyers not required to register in New Mexico who:

- 1) wish to buy goods for resale or incorporation as ingredients or components of a manufactured product; or
 - 2) wish to buy a manufacturing service that will be performed on a manufactured product or an ingredient or component part thereof.
- ◆ **NOTE:** MTCs are not issued by New Mexico.

List of Deductions

A list of deductions from gross receipts is presented below along with any special requirements for claiming the deduction and specific documentation required to support the deduction (e.g. an NTTC). If your receipts do not fall under one of the deductible categories, you do not have any deductions from gross receipts. **BUSINESS EXPENSES** (that is, telephone and electric bills, supply purchases, etc.) **ARE NOT DEDUCTIBLE FOR GROSS RECEIPTS TAX PURPOSES.**

Advanced Energy Deduction

Receipts from selling tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility.

- ◆ Requirement: the holder of the interest in a qualified generating facility must execute a Type 10 NTTC to the seller, which requires a certificate of eligibility from the Department of Environment.
- ◆ Requirement: a taxpayer claiming this deduction must report the deduction on form RPD-41349 *Advanced Energy Deduction* as well as on the CRS-1 Form.
- ◆ NOTE: this deduction is only available for a ten-year period from the year development of the qualified generating facility begins and expenditures are made.
- ◆ NOTE: this deduction cannot be claimed for the same qualified expenses for which the taxpayer claims a credit under Sections 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction under Section 7-9-54.3 NMSA 1978.

Agricultural Deductions

1. Receipts from selling feed for livestock (including the baling wire or twine used to contain the feed), fish raised for human consumption, poultry or for animals raised for their hides or pelts, seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation to persons engaged in the business of farming or ranching and receipts of auctioneers from selling livestock or other agricultural products at auction (7-9-58).
 - ◆ Requirement: farmer or rancher statement (not required for auctioneers).
 - ◆ **NOTE:** includes feed for all horses.
2. Receipts from warehousing grain or other agricultural products and receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products including the ginning of cotton, testing and transporting milk for the producer or nonprofit marketing association from the farm to a milk processing or dairy product manufacturing plant or processing for growers, producers or nonprofit marketing associations of agricultural products raised for food and fiber, including livestock (7-9-59).

3. Fifty percent of receipts from selling agricultural implements, farm tractors or vehicles not required to be registered under the Motor Vehicle Code. The 50% deduction for receipts from sales of agricultural implements may be taken only on sales to persons engaged in the business of farming or ranching. An "agricultural implement" is defined as a tool, utensil or instrument that is subject to depreciation for federal income tax purposes and that is:
 - a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or
 - b) designed primarily for use with a source of motive power to produce agricultural products, including poultry, livestock and food or fiber from poultry or livestock (7-9-62).
 - ◆ Requirement: farmer or rancher statement (for sales of agricultural implements only).
 - ◆ Requirement: trade-in deduction (7-9-71) must be taken before calculating this deduction.
4. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle if the sale is made to one of the following:
 - a) a person who is regularly engaged in the business of ranching or farming, including dairy farmers; or
 - b) a veterinarian who holds a valid license pursuant to the Veterinary Practice Act and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by a person engaged in the ranching or farming business (7-9-109).
 - ◆ Requirement: farmer or rancher statement.

Aircraft Deductions

1. Fifty percent of the receipts from selling aircraft (7-9-62).
 - ◆ Requirement: trade-in deduction (7-9-71) must be taken before calculating this deduction.
2. Receipts of an aircraft manufacturer from selling:
 - a) aircraft or aircraft parts;
 - b) services performed on aircraft or aircraft components;
 - c) aircraft flight support, pilot training or maintenance training services (7-9-62).
 - ◆ Requirement: trade-in deduction (7-9-71) must be taken before calculating this deduction.
3. Receipts from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over 10,000 pounds gross landing weight (7-9-62.1).
4. From July 1, 2003, through June 30, 2012, 55% of the receipts from selling jet fuel for use in turboprop or jet engines. After June 30, 2012, 40% of the receipts from selling jet fuel for use in turboprop or jet engines (7-9-83).

Border Trade-Support Deduction

Receipts of a trade-support company located in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico that are received within a five-year period beginning on the date the trade-support company locates in New Mexico (7-9-56.3).

- ◆ Requirement: trade-support company must locate to New Mexico after July 1, 2003, but before July 1, 2013.
- ◆ Requirement: the receipts must be received by the trade-support company within a five-year period beginning on the date the company locates in New Mexico and they must be derived from its business activities and operations at its border-zone location.
- ◆ Requirement: the trade-support company must employ at least two employees in New Mexico.

Boxing, Wrestling & Martial Arts Deduction

Receipts from producing or staging professional boxing, wrestling or martial arts contests that occur in New Mexico (7-9-107).

Commission Deductions

1. Receipts from commissions on sales of tangible personal property when the property sold is not subject to gross receipts tax and commissions of the owner of a dealer store for selling a principal's goods (7-9-66).
 - ◆ **NOTE:** includes sales that are either exempt or deductible.
 - ◆ Exception: commissions on sales or leases of real property or intangible property (i.e., stocks, bonds, licenses, tickets, or the lease of tangible property) are taxable.
2. Receipts from real estate commissions on the sale of real property which is subject to the gross receipts tax (*i.e.*, new construction) (7-9-66.1).
 - ◆ Exception: commissions associated with the sale of land, since those receipts are not subject to the gross receipts tax, may not be deducted.
 - ◆ **NOTE:** the tax rate for real estate commissions is the rate for the location of the property being sold.
3. Travel agents' commissions paid by maritime transportation companies, and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services (7-9-76).
4. Receipts of lottery ticket retailers from commissions received on lottery ticket sales (7-9-87).

Construction Deductions

1. Receipts from the sale of tangible personal property to a person in the construction business (7-9-51).
 - ◆ Requirement: the tangible personal property by design and intent must become part of a construction project (so that while receipts from the sale of nails are deductible, those from selling a hammer are not).
 - ◆ Requirement: upon its completion the construction project must be subject to the gross receipts tax.
 - ◆ **NOTE:** Construction materials sold to a contractor for use in a construction project on the tribal territory of an Indian nation, tribe or pueblo are deductible.
 - ◆ **NOTE:** A contractor who is an accrual-basis taxpayer must pay the gross receipts tax on progress payments as they are received.
 - ◆ Requirement: Type 6 NTTC.
2. Receipts from the sale of subcontracting services to a person in the construction business (7-9-52).
 - ◆ Exception: indirect services, such as accounting, architectural, engineering, drafting, bid depository services and plan room services are not construction services.
 - ◆ Requirement: upon its completion the construction project must be subject to the gross receipts tax.
 - ◆ **NOTE:** Construction services sold to a contractor for use in a construction project on the tribal territory of an Indian nation, tribe or pueblo are deductible.
 - ◆ Requirement: Type 6 NTTC.
3. Receipts from sales of engineering, architectural and construction services to a foundation or nonprofit organization for use in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area (7-9-99).

- ◆ Requirement: The deduction may only be taken if the foundation or nonprofit organization has made a written agreement with a county to pay at least 95 percent of the new facility construction costs and executes an appropriate nontaxable transaction certificate or delivers evidence that such a written agreement has been made.
4. Receipts from sales of construction equipment or construction materials to a foundation or nonprofit organization for use in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area (7-9-100).
 - ◆ Requirement: The deduction may only be taken if the foundation or nonprofit organization has made a written agreement with a county to pay at least 95 percent of the construction costs and executes an appropriate nontaxable transaction certificate or delivers evidence that such a written agreement has been made.
 5. Receipts from military construction services provided at New Mexico military installations to implement special operations mission transitions projects pursuant to contracts entered into with the U.S. Department of Defense (7-9-106).
 - ◆ Requirement: the military installation must be located in Curry County.
 - ◆ Requirement: this deduction would apply only to reporting periods from July 1, 2007, through December 31, 2010.
 6. Receipts from the sale of construction materials to a 501(c)(3) organization organized for the purpose of providing homeownership opportunities to low-income families (7-9-60).
 - ◆ Requirement: Type 9 NTTC.

Credit Union Deductions (Sale to)

1. Receipts from selling tangible personal property to federally chartered credit unions.
 - ◆ Requirement: Type 9 NTTC or other proof.
2. Receipts from selling tangible personal property to state-chartered credit unions (7-9-61.2).
 - ◆ Requirement: Type 9 NTTC or other proof.
 - ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.

Electric Transmission and Storage Facility Deductions

1. Receipts from selling equipment to the New Mexico Renewable Energy Transmission Authority or an agent or lessee of the authority (7-9-101).
 - ◆ Requirement: the equipment must be installed as part of an electric transmission facility or an interconnected storage facility.
2. Receipts from providing services to the New Mexico Renewable Energy Transmission Authority or an agent or lessee of the authority. Qualified services include: planning, installation, repair, maintenance or operation of an electric transmission facility or an interconnected storage facility (7-9-103).

Film Lease Deduction

Receipts from leasing theatrical and television films and tapes to movie theaters or similar facilities when the theater's receipts are subject to gross receipts tax (7-9-76.2).

Filmmaker Deduction (Sale to)

Receipts from selling or leasing property and from performing services that qualify as production costs of qualified production companies (7-9-86).

- ◆ Requirement: buyer must submit proof of registration as a qualified production company with the New Mexico Film Division of the Economic Development Department.

- ◆ Requirement: Type 16 NTTC.

- ◆ **NOTE:** This deduction is not available to film production companies taking the film production tax credit. For more information on the film production tax credit, request publication FYI-106 from your local district office or from our website at www.tax.state.nm.us/.

Food Deduction

Receipts from qualifying food sales at retail food stores as defined under the federal food stamp program (7-9-92).

- ◆ Exception: sales of alcoholic beverages, tobacco and prepared hot foods for immediate consumption are not deductible.

- ◆ **NOTE:** special reporting is required for this deduction. See the instructions for completing the CRS-1 Form in the “CRS-1 Filer’s Kit” or on our website at www.tax.state.nm.us/. “FYI-201, Gross Receipts Tax and Certain Foods” contains a sample CRS-1 Form showing the correct reporting of this deduction. You will find “FYI-201” under “Publications” on our website.

Governmental Entity Deductions (Sale to)

1. Receipts from selling tangible personal property to a United States or New Mexico governmental entity or the governing body of an Indian nation, tribe or pueblo for use on an Indian reservation or pueblo grant (7-9-54).

- ◆ Exception: does not include materials sold to a United States or New Mexico governmental entity that will be incorporated into a construction project.

- ◆ **NOTE:** When a seller in good faith deducts receipts from the sale of construction materials to a government after receiving written assurances from the government that the property will not be used in a construction project, the Department is barred from assessing the seller gross receipts tax on those receipts. However, the Department may assess the buyer for compensating tax if the materials are subsequently used in a construction project.

- ◆ Exception: does not include leasing of property or licenses or the performance of services.

- ◆ Exception: not applicable to other states' governmental entities (*i.e.*, Texas, Colorado, Arizona, etc.).

- ◆ Requirement: either a Type 9 NTTC or proof that payment was from a United States or New Mexico governmental entity or the governing body of an Indian nation, tribe or pueblo.

- ◆ **NOTE:** includes receipts from selling tangible personal property to the American National Red Cross.

- ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.

2. Receipts from selling or leasing property to, or from performing services for accredited foreign missions or diplomats (7-9-89)

- ◆ Requirement: Type 16 NTTC.

3. Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility (7-9-54.3).

- ◆ Exception: this deduction shall not be claimed for receipts from an expenditure for which a taxpayer claims a credit pursuant to Sections 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

4. Receipts from the sale of property or services purchased by, or on behalf of, the state of New Mexico (7-9-97).
 - ◆ Requirement: the purchases must be made with funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act or the Water Quality Act.

Gross Receipts Tax Holiday Deduction

Receipts from retail sales of specified tangible personal property if the sale of the property occurs during the period between 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday (7-9-95).

- ◆ Requirement: this deduction applies only to receipts from sales of the following items:
 - Clothing or shoes sold for less than \$100;
 - Desktop, laptop or notebook computers sold for no more than \$1,000 and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse sold for no more than \$500;
 - School supplies normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures.
- ◆ Exception: this deduction does not apply to receipts from sales of the following items:
 - Special clothing or footwear worn for athletic activities or protective use;
 - Accessories, including jewelry, handbags, luggage, umbrellas, wallets and watches.
- ◆ **NOTE:** a separate form reporting receipts specific to this deduction, RPD-41299, will be required along with the CRS-1 Form. RPD-41299 is available at your local district tax office or online at www.tax.state.nm.us/.

Internet Deductions

1. Receipts from the sale of a service or property through the Internet to a person with a billing address outside New Mexico (7-9-57.1).
2. Receipts from hosting web sites (7-9-56.2).
3. Receipts from providing telecommunications, Internet or Internet access services to Internet Service Providers (ISPs) (7-9-56.1). Receipts of ISPs from providing access or other services (except hosting) to ultimate users are not deductible.

Interstate Commerce Deductions

1. Receipts from transactions in interstate commerce and from sales of radio or television broadcast time if the ultimate buyer is a national or regional advertiser (7-9-55).
 - ◆ **NOTE:** retail sales to out-of-state buyers who place orders from out of state, accept delivery out of state, and title and risk of loss pass to buyer out of state are deductible.
 - ◆ Exception: commissions of advertising agencies are not deductible.
 - ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
2. Receipts from intrastate transporting of persons or property if under a single contract for transportation in interstate or foreign commerce (including handling, storage, drayage or packing) (7-9-56).

3. Receipts from leasing vehicles used by persons required to have federal authority to transport passengers or property for hire in interstate commerce (7-9-70).
 - ◆ **NOTE:** this deduction is available to the lessor, not the lessee.

Leasing Deductions

1. Receipts from the sale of tangible personal property or licenses for leasing (7-9-49).
 - ◆ Exception: receipts from the sale of coin-operated machines, manufactured homes or furniture and appliances used in an apartment, manufactured home or other leased or rented dwelling unit are not deductible.
 - ◆ Requirement: Type 2 NTTC.
2. Receipts from leasing tangible personal property or licenses for subsequent lease (7-9-50).
 - ◆ Exception: receipts from leasing coin-operated machines, manufactured homes or furniture and appliances used in an apartment, manufactured home or other leased or rented dwelling unit are not deductible.
 - ◆ Requirement: Type 2 NTTC.

Loan Charges Deduction

Receipts from charges made in connection with the origination, making or assumption of a loan or from charges made for handling loan payments (7-9-61.1).

- ◆ Exception: the receipts of an escrow agent are not deductible from gross receipts.

Lottery Retailer Deduction

Receipts of a lottery game retailer from selling New Mexico lottery tickets (7-9-87).

Manufactured Home Resale Deduction

Receipts from the resale of a manufactured home which was subject to gross receipts, compensating or motor vehicle excise tax on its original sale or use in New Mexico (7-9-76.1).

- ◆ Requirement: proof of payment of one of the above-mentioned taxes.

Manufacturing Deductions

1. Receipts from selling tangible personal property to persons in the manufacturing business (7-9-46).
 - ◆ Requirement: tangible personal property must become an ingredient or component part of the manufactured product.
 - ◆ Requirement: person must own the product to be considered a manufacturer.
 - ◆ Requirement: Type 2 NTTC, NTTC-OSB, MTC or BSC.
 - ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
2. Receipts from selling the service of combining or processing materials to a manufacturer (7-9-75).
 - ◆ Requirement: service must be performed directly on the product being manufactured.
 - ◆ Requirement: Type 5 NTTC, NTTC-OSB, MTC or BSC.
3. Receipts from selling tangible personal property to be used in the manufacture of jewelry (7-9-74).
 - ◆ Requirement: deduction may not exceed \$5,000 per purchaser during a twelve-month period.
 - ◆ Requirement: jewelry manufacturer statement; if sales exceed \$5,000 in twelve-month period, a Type 2 NTTC, NTTC-OSB, MTC or BSC is needed.

Medical Deductions

1. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed Medicare durable medical equipment provider (7-9-73.2).
◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
2. Receipts from selling prosthetic devices to persons licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, chiropractic or professional nursing (7-9-73).
◆ **NOTE:** Includes contact lenses, eyeglasses (frame and lens glass) sold to ophthalmologists and optometrists.
◆ **Exception:** does not include property used in making dentures and supplies such as silver, orthodontia wire, facings and similar items sold to dentists.
◆ **Requirement:** Type 2 NTTC.
◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
3. Fifty percent of receipts of hospitals may be deducted (7-9-73.1).
◆ **Requirement:** this deduction may be taken only after all other available deductions.
4. Receipts from Medicare received by:
 - Medical doctors, osteopathic physicians, doctors of oriental medicine, athletic trainers, chiropractic physicians, counselor and therapist practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists for providing medical and other health services to Medicare beneficiaries;
 - A hospice for providing medical, other health and pain-relieving services to Medicare beneficiaries;
 - A clinical laboratory for medical services to Medicare;
 - A home health agency for medical, other health and pain-relieving services to Medicare beneficiaries;
 - A nursing home for medical, other health and palliative services (7-9-77.1).
5. Receipts of medical doctors and osteopathic physicians from payments by a third-party administrator of the federal TRICARE program (7-9-77.1).
◆ **Requirement:** receipts must be from providing medical and other health services.
6. Receipts of licensed health care practitioners from payments by managed health care providers or health care insurers for commercial contract services or Medicare Part C services provided by a health care practitioner (7-9-93).
◆ **Exception:** receipts from fee-for-service payments, co-payments or any other payments by the patient are not deductible.
◆ **Exception:** receipts already exempt or deductible under another provision of the Gross Receipts and Compensating Tax Act are not deductible under this section.
◆ **NOTE:** special reporting is required for this deduction. Please see the instructions for completing the CRS-1 Form in the “CRS-1 Filer’s Kit” or on our website at www.tax.state.nm.us/. “FYI-202, Gross Receipts Tax and Health Care Services” contains a sample CRS-1 Form showing the correct reporting of this deduction. You will also find “FYI-202” under “Publications” on our website.
7. Receipts of a medical doctor or osteopathic physician from payments by or on behalf of the Indian Health Service of the U.S. Department of Health and Human Services for the provision of medical and other health services to covered beneficiaries (7-9-77.1).

8. Receipts from selling vision aids or hearing aids or related services (7-9-111).

- ◆ Exception: receipts already exempt or deductible under another provision of the Gross Receipts and Compensating Tax Act are not deductible under this section.

Mining, Milling or Oil Company Deduction

Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil wells, and receipts from selling chemicals or reagents in lots in excess of eighteen tons (7-9-65).

- ◆ Exception: receipts from selling explosives, blasting powder or dynamite are not deductible.

Nonathletic Special Event Deduction

Receipts from admissions to nonathletic special events held at a venue that is located on the campus of a post-secondary school within 50 miles of the New Mexico border that holds at least 10,000 people (7-9-104).

- ◆ Requirement: to be eligible, receipts must be received between July 1, 2007, and June 30, 2012.

Nonprofit Organization Deduction (Sale to)

1. Receipts from selling tangible personal property to 501(c)(3) organizations for use in their exempt functions (7-9-60).

- ◆ Exception: materials included as part of a construction project and construction services provided by a construction contractor are not deductible unless the organization is providing homeownership opportunities to low-income families (Subsection B of 7-9-60).
- ◆ Exception: leasing of tangible personal property or licenses or performance of construction or other services is not deductible.
- ◆ Requirement: Type 9 NTTC.
- ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.

2. Receipts from selling construction materials and metalliferous mineral ore to 501(c)(3) organizations (7-9-60).

- ◆ Requirement: the 501(c)(3) organization must be organized for the purpose of providing homeownership opportunities to low-income families.
- ◆ Requirement: Type 9 NTTC.

Nonprofit Organization Deduction (Sale by)

Organizations exempt from federal income tax under Section 501(c) of the Internal Revenue Code may deduct the receipts from two fund-raising events each calendar year (7-9-85).

- ◆ Exception: this deduction is not available to 501(c)(3) organizations, the receipts of which are exempt under Section 7-9-29, except for receipts from unrelated trade of business as defined in the United States Internal Revenue Code.

Out-of-State Buyer Deduction (Sale to)

Receipts from the sale of tangible personal property either for resale or for use as an ingredient or component part of a manufactured product or from purchasing a manufacturing service that will be performed directly upon tangible personal property to a customer located outside of New Mexico.

- ◆ Requirement: buyer must provide proof the buyer is in the business of reselling the property purchased or manufacturing a product containing the property or service purchased.

- ◆ Requirement: buyer must be registered to pay sales, gross receipts or a similar type tax with the taxing authority in the buyer's business location.
- ◆ Requirement: buyer is not required to be registered in New Mexico.
- ◆ Requirement: Type NTTC-OSB, MTC or BSC.

Property Resale Deduction

Receipts from sales of tangible personal property or licenses for resale (7-9-47).

- ◆ Requirement: Type 2 NTTC, Type NTTC-OSB, MTC or BSC.
- ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
- ◆ **NOTE:** Type NTTC-OSB, BSC or MTC for sales of tangible personal property only to buyers not required to be registered in New Mexico.
- ◆ **NOTE:** includes receipts from selling tangible personal property to a qualified federal contractor or subcontractor who has entered into a service contract with one of the U.S. agencies that signed a special agreement between New Mexico and the U.S. government. If criteria listed in the agreement are met, the federal contractor or subcontractor may execute Type 15 NTTCs with its vendors.

Publisher's Deductions

1. Receipts from publishing newspapers or magazines (7-9-63).
 - ◆ Exception: receipts from selling advertising space are not deductible.
 - ◆ Exception: receipts from selling magazines at retail are not deductible.
2. Receipts from selling newspapers (7-9-64).
 - ◆ Exception: receipts from selling advertising space are not deductible.

Real Estate Deductions

1. Receipts from the sale or lease of real property, which includes the land and anything permanently affixed thereto, from the lease of a manufactured home for at least one month and from the rental of space for a manufactured home or recreational vehicle for at least one month (7-9-53).
 - ◆ **NOTE:** receipts attributable to the inclusion of furniture or appliances as part of the lease of a dwelling are deductible.
 - ◆ Exception: receipts from the rental of manufactured homes, or spaces for recreational vehicles or manufactured homes for periods of less than a month are not deductible.
 - ◆ Exception: receipts from the rental of rooms in hotels, motels, rooming houses, campgrounds, and guest ranches regardless of the rental time period are not deductible.
 - ◆ Exception: this deduction does not apply to improvements constructed on the land by a construction contractor.
2. Receipts from real estate commissions on the sale of real estate which is subject to the gross receipts tax (*i.e.*, new construction) (7-9-66.1).
 - ◆ Exception: commissions associated with the sale of land are not deductible since receipts from the sale of land are not subject to the gross receipts tax.
 - ◆ **NOTE:** the tax rate for real estate commissions is the rate for the location of the property being sold.

Refund and Allowance Deduction

Refunds and allowances made to buyers and amounts written off the books as uncollectible debts by accrual-basis taxpayers (7-9-67).

- ◆ Requirement: deduction must be taken in month refund or allowance is given.

- ◆ Requirement: deduction cannot exceed gross receipts for a given report period. Excess may be carried forward.
- ◆ Requirement: the gross receipts tax must have been paid on the initial transaction.
- ◆ Requirement: only accrual-basis taxpayers may deduct amounts written off the books as uncollectible debts, *i.e.*, sales previously reported as taxable receipts for which payment has not been received.
- ◆ Example: when you register with the Department, we ask you to choose your accounting method based on how you post your receipts into your books. If you post charge sales as receipts when you actually receive payment, you use the cash-basis accounting method; if you post charge sales as receipts when you bill them, you use the accrual-basis accounting method.
- ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.

Service Provider Deductions

1. Receipts from the sale of services for resale (7-9-48).
 - ◆ Requirement: subsequent sale must be subject to the gross receipts tax or governmental gross receipts tax.
 - ◆ Requirement: seller must be in the business of selling the same or a similar service to that being purchased.
 - ◆ Requirement: Type 5 NTTC.
 - ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.
2. Receipts from the sale of a service to an out-of-state buyer (7-9-57).
 - ◆ Requirement: the out-of-state buyer must accept delivery and make initial use of the product of the service outside New Mexico.
 - ◆ Requirement: Type 5 NTTC or other evidence to support deduction.
3. Receipts of a business entity from an affiliate for performing administrative, managerial, accounting and customer services or sharing office machines and facilities (7-9-69).
 - ◆ Requirement: must be on a nonprofit or cost basis.
 - ◆ **NOTE:** an affiliate is a business entity that, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, another business entity.
4. Receipts from the sale to a 501(c)(3) organization or the United States, other than a national laboratory, of aerospace services (7-9-54.1).
5. Receipts from operating a spaceport; launching, operating or recovering space vehicles or payloads; preparing a payload; or research, development, testing and evaluation services for the U.S. Air Force Operationally Responsive Space Program (7-9-54.2).
6. Receipts from the sale of software development services that are performed in a qualified area by an eligible software company (7-9-57.2).
 - ◆ Requirement: only a taxpayer who is not a successor in business of another taxpayer and whose primary business in New Mexico is established after July 1, 2002, is eligible for this deduction.
 - ◆ Requirement: the software development services must be performed outside the municipal boundaries of Albuquerque, Las Cruces, Santa Fe and Rio Rancho.
 - ◆ Exception: does not include software implementation or support services.
7. Receipts from military transformational acquisition programs performing research and development, test and evaluation services at New Mexico major range and test facility bases (7-9-94).
 - ◆ **NOTE:** this deduction is only available through June 30, 2016.

- ◆ Exception: this deduction does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress or to current force programs as of July 1, 2005.

8. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust (7-9-108).

Solar Energy Systems Deduction

Receipts from the sale or installation of solar energy systems (7-9-112).

- ◆ Requirement: written statement that the equipment or services purchased are for the exclusive use in the installation or operation of the solar energy system.
- ◆ **NOTE:** Construction contractor's who intend to take the solar energy systems deduction should not execute a Type 6 NTTC for the purchase of the solar energy system.

Special Fuel Deduction

Receipts from the sale of special fuel consisting of at least ninety-nine percent vegetable oil or animal fat (7-9-113).

- ◆ Requirement: the special fuel excise tax deduction under Section 7-16A-10 must be claimed.
- ◆ **NOTE:** this deduction is only available through June 30, 2014.

Telecommunications Deduction

Receipts from telephone access charges paid by other telephone carriers (7-9-56).

- ◆ **NOTE:** receipts of telephone companies from providing interstate and foreign telecommunication services are exempt from gross receipts tax but subject to the interstate telecommunications gross receipts tax. Hotels and motels are not telephone companies and therefore are subject to gross receipts tax.

Trade-In Deduction

Receipts from a trade-in of tangible personal property (7-9-71).

- ◆ Requirement: property traded in must be the same type as that being sold.
- ◆ Exception: does not include manufactured homes.

Uranium Enrichment Plant Deduction

Receipts from selling enriched uranium or from enriching uranium (7-9-90).

Warranty Fulfillment Deduction

Receipts of a dealer from furnishing goods or services to fulfill a manufacturer's warranty obligation (7-9-68).

- ◆ Exception: receipts of warranty subcontractors may not be deducted since they are not dealers.

COMPENSATING TAX

What Is Compensating Tax?

Compensating tax is an excise tax imposed on persons using property or services in New Mexico as described below (7-9-7).

Compensating tax is designed to protect New Mexico businesses from unfair competition from out-of-state businesses not subject to gross receipts tax.

"Use" means use, consumption or storage other than storage for subsequent sale in the ordinary course of business or storage for use solely outside New Mexico (7-9-3[N]).

Compensating Tax Is Levied on Property

The following property is subject to compensating tax:

1. Property that was manufactured by the person using the property in New Mexico (7-9-7).
2. Property that was acquired from a person located outside New Mexico that would have been subject to gross receipts tax had the property been acquired from a person with nexus with New Mexico (7-9-7).
 - ◆ Example: A New Mexico business purchases for its own use computer floppy disks and printer ribbons from a mail order firm in New Jersey that delivers the order by common carrier to the buyer's New Mexico business location. The buyer must pay compensating tax on the value of these products, plus any freight, delivery and handling charges billed by the seller.
3. Property that was acquired in a nontaxable transaction but subsequently was converted to use by the person instead of being used in a nontaxable manner (7-9-7).
 - ◆ Example: A grocer has issued an NTTC to a baker for the purchase of bread for resale. The grocer takes a loaf of bread home for her own consumption. The grocer is liable for compensating tax on the value of the loaf of bread because it was converted to use by the grocer instead of being resold.
 - ◆ Example: A boot manufacturer has issued NTTCs to various vendors of items such as leather that he uses to make boots. The manufacturer gives one of the pairs of boots to his daughter. The manufacturer converted the boots to his own use instead of selling them. The manufacturer is liable for compensating tax on the value of the boots that he gave to his daughter.

NOTE: although the compensating tax is still due on transactions described above, if the buyer is an individual and the item purchased is for personal use, the department will not take action against the individual to collect the tax unless the item is a manufactured home (7-9-7.1). The Department will continue to take action when the tax is due on purchases by businesses and government agencies (when applicable) and when businesses have a duty to collect and remit the tax.

Compensating Tax Is Levied on Services

Services that were acquired in a nontaxable transaction but subsequently were converted to use instead of being used in a nontaxable manner are subject to the compensating tax (7-9-7).

- ◆ Example: A contractor issues NTTCs to subcontractors for the purchase of construction services which he uses to build a house. Instead of selling the completed house, the contractor moves into it.

Because the contractor has converted the house to his own use, he is liable for compensating tax on the value of the construction services he purchased with NTTCS.

What Is the Compensating Tax Rate?

Compensating tax at a rate of 5.125% is imposed on the value of property at the time of acquisition or introduction into New Mexico or at the time conversion to use, whichever is later.

Compensating tax at a rate of 5% is imposed on the value of services at the time the services are rendered.

The value of tangible personal property is the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used (7-9-7). The value of services is the total amount of money or other consideration paid for the service unless the reasonable value is greater than the actual amount paid, in which case value would be the reasonable value (7-9-8).

Who Has the Liability for Compensating Tax?

1. **Buyer or User** - Unlike gross receipts tax, liability for compensating tax rests with the buyer or user rather than the seller. The buyer has met the tax obligation, however, if the buyer paid compensating tax to a seller who is an agent for the collection of compensating tax. The compensating tax must be separately stated on the invoice to verify payment (7-9-9).
2. **Agent for the Collection of Compensating Tax** - Persons selling property or property and service for use in New Mexico who are not liable for gross receipts tax on the sales may be liable to collect compensating tax for the state if the person is carrying on or causing to be carried on any business activity in New Mexico (7-9-10).

Exemptions From Compensating Tax

Transactions exempt from compensating tax do not have to be reported on the CRS-1 Form.

List of Exemptions

Electricity Exemption

The use of electricity in the production and transmission of electricity (7-9-38).

Fuel Exemptions

1. The use of gasoline, special fuel or alternative fuel on which the gasoline tax (7-13-3), special fuel excise tax (7-16A-3) or alternative fuel excise tax (7-16B-4) has been paid and not refunded (7-9-26).
2. The use of oil, natural gas, liquid hydrocarbons or any combination of these as fuel consumed in the pipeline transportation of any of these products (7-9-37).
3. The use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers (7-9-26.1).

4. The use of fuel to be loaded or used by a common carrier in a locomotive engine (7-9-41.2).
◆ **NOTE:** This exemption was to become effective July 1, 2010, if the Economic Development Department would have certified to the Taxation and Revenue Department by January 1, 2010, that construction of a railroad locomotive refueling facility project had commenced. Such a certification from the Economic Development Department was never received by the Taxation and Revenue Department; as a result this exemption is not currently available.

Governmental Entity Exemptions

1. The use of property by the U.S. Government or one of its agencies or the state of New Mexico or one of its agencies or political subdivisions (7-9-14).
◆ Exception: the use of property by a New Mexico political subdivision that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code is not exempt.
◆ Exception: the use of construction materials -- tangible personal property that becomes or is intended to become an ingredient or component part of a construction project -- is not exempt.
2. The use of property on Indian reservations or pueblo grants by the governing body, agency or subdivision of an Indian nation, tribe or pueblo (7-9-14).
3. The use of property by any instrumentality of the United States Armed Forces engaged in resale activities (7-9-31).

Nonprofit Organization Exemption

The use of property by organizations that have been granted tax exemption under Section 501(c)(3) of the Internal Revenue Code as long as the property is used in the conduct of their exempt functions (7-9-15).

- ◆ Exception: property used in an unrelated trade or business as defined in Section 513 of the Internal Revenue Code and property used as an ingredient or component part of a construction project are not exempt.

Personal and Household Effects Exemption

The use by an individual of personal or household effects brought into New Mexico at the time the individual establishes an initial residence in this state (7-9-27).

- ◆ **NOTE:** includes the non-business use of property in New Mexico by a nonresident while temporarily in this state.

Railroad, Aircraft and Space Vehicle Exemptions

1. The use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation (7-9-30).
2. The use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce (7-9-30).
3. The use of space vehicles for transportation of persons or property in, to or from space (7-9-30).

Vehicles and Boats Exemptions

1. The use of vehicles on which the motor vehicle excise tax has been paid and the use of vehicles exempt from the motor vehicle excise tax pursuant to Section 7-14-6 NMSA 1978 (7-9-23).
2. The use of vehicles subject to registration with the Motor Vehicle Division under Section 66-3-16 (special registration for disabled persons) (7-9-23).
3. The use of boats on which the boat excise tax (66-12-6.1) has been paid (7-9-23.1).

Deductions from Compensating Tax

Deductions from compensating tax, unlike deductions from gross receipts tax, do not have to be reported on the CRS-1 Form, but records substantiating the deduction should be kept in the taxpayer's records.

List of Deductions

Advanced Energy Deduction

The value of eligible generation plant costs from the sale of tangible personal property to a person that holds an interest in a qualified generating facility for which the Department of Environment has issued a certificate of eligibility.

- ◆ Requirement: a taxpayer claiming this deduction must report the deduction on form RPD-41349 *Advanced Energy Deduction*.
- ◆ **NOTE:** this deduction is only available for a ten-year period from the year development of the qualified generating facility begins and expenditures are made.
- ◆ **NOTE:** this deduction cannot be claimed for the same qualified expenses for which the taxpayer claims a credit under Sections 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction under Section 7-9-54.3 NMSA 1978.

Agricultural Implement, Aircraft, Vehicle Deduction

1. Fifty percent of the value of farm tractors, aircraft not exempted under Section 7-9-30 and vehicles not required to be registered under the Motor Vehicle Code may be deducted from total value before computing compensating tax due. Also 50% of the value of agricultural implements may be taken by persons engaged in the business of farming or ranching. An "agricultural implement" is defined to be a tool, utensil or instrument that is subject to depreciation for federal income tax purposes and designed primarily for use with a source of motive power to produce agricultural products, including poultry, livestock and food or fiber from poultry or livestock (7-9-77).

- ◆ Requirement: any trade-in deduction (7-9-71) must be taken before taking this 50% deduction.

Biomass-Related Equipment Deductions

1. The value of a biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due (7-9-98).

2. The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due (7-9-98).

Electric Transmission and Storage Facility Deduction

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico Renewable Energy Transmission Authority may be deducted in computing compensating tax due (7-9-102).

Fuel Deduction

From July 1, 2003, through June 30, 2012, 55% of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing compensating tax due. After June 30, 2012, 40% of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing compensating tax due (7-9-84).

Government Deduction (Contribution to)

The value of tangible personal property that is removed from inventory and contributed to a U.S. or New Mexico government entity or the governing body of an Indian nation, tribe or pueblo for use on an Indian reservation or pueblo grant, may be deducted in computing the compensating tax due (7-9-91).

- ◆ Exception: contributions of tangible personal property that will become an ingredient or component part of a construction project are not deductible.
- ◆ Exception: contributions of tangible personal property utilized or produced in the performance of a service are not deductible.

Leasing Deduction

The value of tangible personal property held for leasing by a person engaged in the business of selling or leasing the same type property may be deducted before computing compensating tax due (7-9-78).

- ◆ Requirement: the person must be engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased.
- ◆ Requirement: the person cannot use the tangible personal property in any manner other than holding it for lease or sale.
- ◆ Requirement: the person cannot use the tangible personal property in a manner incidental to the performance of a service.
- ◆ Exception: the value of furniture or appliances furnished as part of a leased or rented dwelling by the lessor, coin-operated machines and manufactured homes may not be deducted.

Nonprofit Organization Deduction (Contribution to)

The value of tangible personal property that is removed from inventory and contributed to 501(c)(3) organizations may be deducted in computing the compensating tax due (7-9-91).

- ◆ Exception: contributions of tangible personal property that will become an ingredient or component part of a construction project are not deductible.
- ◆ Exception: contributions of tangible personal property utilized or produced in the performance of a service are not deductible.
- ◆ Requirement: the tangible personal property must be deductible by the contributor for federal income tax purposes.

Space-Related Test Article Deductions

1. The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display, may be deducted in computing compensating tax due (7-9-54.4).
 - ◆ Exception: this deduction does not apply to any other use of space-related test articles.
2. The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of space-related test articles may be deducted in computing compensating tax due (7-9-54.4).
 - ◆ Exception: this deduction does not apply to any other use of such equipment and materials.
 - ◆ **NOTE:** a space-related test article is a material or device intended to be used primarily in research or testing to determine properties and qualities of material or properties, qualities or functioning of a device or technology when the principal use of the material, device or technology is intended to be in space or as part of, or associated with, a space vehicle.

Test Article Deduction

The value of test articles upon which research or testing is conducted in New Mexico pursuant to a contract with the United States Department of Defense may be deducted in computing the compensating tax due (7-9-54.5).

- ◆ **NOTE:** a test article is a material or device upon which research or testing is conducted to determine the properties and qualities of the material or the properties, qualities or functioning of the device or a technology used with the device.
- ◆ Exclusion: this deduction does not apply to the value of property purchased by a prime contractor operating a facility designated as a national laboratory by an act of congress.

Trade-In Allowance Deduction

The value of the allowance given to a buyer for a trade-in of the same type tangible personal property being purchased may be deducted from the value of the property sold before computing compensating tax due (7-9-77).

Uranium Enrichment Plant Deduction

The value of equipment and replacement parts used to enrich uranium in a uranium enrichment plant (7-9-78.1).

CRS TAX CREDITS

These 17 credits, explained in detail in the next section of this publication, are available to CRS taxpayers:

1. The investment credit may be applied against the state gross receipts (excluding local option gross receipts taxes), compensating or withholding tax liability;
2. The rural jobs tax credit may be applied against taxes due on the CRS-1 Form (excluding local option gross receipts taxes), or against personal or corporate income tax liability;

3. The laboratory partnership with small business tax credit may only be claimed by national laboratories operating in New Mexico and is applied against gross receipts taxes due up to \$1,800,000 excluding local option gross receipts taxes;
4. The technology jobs tax credit: the basic credit may be applied against gross receipts, compensating or withholding tax; the additional credit may be applied against personal or corporate income tax liability;
5. Sales or use tax paid to another state may be applied against compensating tax liability;
6. A gross receipts tax credit is available when the product of a research and development service performed outside New Mexico is initially used in New Mexico and the service has been taxed through a gross receipts, sales or similar tax in another state;
7. Compensating tax paid on construction projects may be applied against gross receipts tax liability;
8. The high-wage jobs tax credit may be claimed by eligible employers against gross receipts, compensating, withholding tax and other CRS taxes, except local option gross receipts taxes. The excess is refundable to the taxpayer when the credit is more than the tax liability;
9. The sale of service for resale tax credit may be applied against gross receipts tax or governmental gross receipts tax liability;
10. The research and development small business tax credit may be claimed by qualified research and development small businesses and is applied against gross receipts, compensating or withholding tax liability, and
11. The affordable housing tax credit may be applied against gross receipts, compensating, withholding, personal income or corporate income tax liability through the sale or transfer of vouchers issued by the Mortgage Finance Authority;
12. The hospital credit may be claimed by hospitals licensed by the New Mexico Department of Health against gross receipts tax phased-in over a four-year period;
13. The biodiesel blending facility tax credit may be claimed by a rack operator against gross receipts and compensating taxes for 30% of the cost of purchasing or installing biodiesel blending equipment;
14. A tax credit, phased-in over three years, for unpaid charges for services provided in a hospital may be claimed by a licensed medical doctor or licensed osteopathic physician against gross receipts taxes;
15. The advanced energy tax credit may be claimed by an interest owner for their expenditures for the development and construction of a new solar thermal electric generating facility or a new or re-powered coal-based electric generating unit and an associated coal gasification facility;
16. The alternative energy products manufacturing tax credit may be claimed against gross receipts, compensating, withholding tax and other CRS taxes, except local option gross receipts taxes. The excess credit may be carried forward for up to five years;
17. A credit for penalties paid pursuant to Section 7-1-71.2 NMSA 1978 may be claimed by taxpayer with gross receipts, compensating or withholding tax liability.

Investment Credit

New Mexico has an Investment Credit Act (7-9A-1) to augment its favorable tax climate for manufacturing operations and to promote increased employment in New Mexico. The investment credit provided for in the act is an amount equal to the compensating tax rate (5.125%) applied to the value of qualified equipment. The credit may be claimed by the taxpayer incorporating the qualified equipment into a manufacturing operation in New Mexico, provided certain employment conditions are met.

The value of the qualified equipment is the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code. The employment conditions are:

- For every \$500,000 of equipment, one employee must be added up to \$30 million; and
- For amounts exceeding \$30 million, one employee must be added for each \$1 million of equipment.

A taxpayer must apply for the credit. Additional information on the credit is provided with application forms available from the Department. Once approval is granted by the Department, the amount of any available credit may be applied against the taxpayer's compensating tax, gross receipts tax (does not include county or municipal taxes) or withholding tax due. The amount of investment credit claimable on any CRS return is limited to 85% of CRS taxes due. On January 1 of any year certain claimants may cash in their remaining approved credit.

Rural Job Tax Credit

Eligible employers may earn a credit for each qualifying job created after July 1, 2006. The credit may be applied against the state taxes due on the CRS return (excluding local option gross receipts taxes) or against personal or corporate income tax.

An "eligible employer" is one who has been approved by the Economic Development Department for in-plant training assistance. A "qualifying job" is one that is occupied by an eligible employee for at least 48 weeks in a 12-month qualifying period. The "rural area" of New Mexico excludes Albuquerque, Los Ranchos, Los Alamos, Rio Rancho, Santa Fe, and Las Cruces, and the area within ten miles of these municipalities. A "tier one" area is defined as a municipality within a rural area with a population of 15,000 or less. A "tier two" area is a municipality within a rural area with a population over 15,000.

The credit amount equals 6.25% of the first \$16,000 in wages paid for a qualifying job in a "tier one" area and 12.5% of the first \$16,000 in a "tier two" area. . If the job is located in a "tier one" area, the employer may receive a credit for four consecutive years; if it is in a "tier two" area, the employer may take the credit for two consecutive years. A credit once earned is transferable.

Laboratory Partnership Credit

When a national laboratory offers certain types of eligible assistance to individual small businesses ("small business" as defined in the federal Small Business Act, P.L. 85-536) in New Mexico and incurs expenses for doing so, it may take a credit against the state portion of gross receipts tax of up to \$10,000 per business or \$20,000 for a business in a rural area. The limit on assistance to a particular small business would apply to the total amount of assistance provided by all national laboratories to that business. Local option gross receipts tax is excluded. The maximum credit is \$2,400,000 in any calendar year. Qualified expenses range widely from wages/benefits to providing mentors to the small business in partnership with the laboratory. The business must certify to the laboratory that the assistance it seeks is not available at reasonable cost through private industry.

Technology Jobs Tax Credit

Any taxpayer doing qualified research and development at a facility in New Mexico (other than one operated for the United States government) may claim a credit equal to 4% of qualified expenditures. Qualified expenditures include rent, facility operation and maintenance (except for facilities owned by the taxpayer before the effective date, owned by a local government as an industrial revenue bond project or for which the taxpayer received another credit), equipment, software, payroll and technical manuals and materials. Taxpayer must apply to this Department for approval of credit amounts within one year of the end of the calendar year in which the expenditure occurred. After approval, the basic credit may be applied against state taxes due on the CRS-1 Form. Additional credits can be earned by certain taxpayers who increase their payroll expenses over the prior year. These additional credits can only be applied to income tax liabilities. The credit amount doubles if the qualified facility is in a rural area. On the effective date, "rural area" will be that part of the state outside Bernalillo, Doña Ana, San Juan and Santa Fe Counties plus a three-mile zone around those counties and Rio Rancho. A recapture clause applies.

Tax Paid to Another State

The amount of sales, compensating or similar tax (up to a 5.125% rate) paid to another state on property acquired in that state or another state for use in New Mexico may be credited against the amount of compensating tax due to New Mexico on the property (7-9-79).

Tax Paid to Another State – Product of Research and Development Service

When a taxpayer pays gross receipts, sales or similar tax in another state, or political subdivision of that state, on the product of research and development services performed outside New Mexico but initially used in New Mexico a credit against gross receipts tax can be claimed. This credit can only be claimed for receipts after July 1, 1989, and the amount of the credit can not exceed 5.125% multiplied by the amount subject to by both New Mexico and the other state or political subdivision of that state. To claim this credit, taxpayers should use the *Non-New Mexico Research and Development Credit Form* (RD-1).

Compensating Tax on Construction Projects

When a person in the construction business owes gross receipts tax on the sale of a construction project, the person may take a credit against the gross receipts tax due for the amount of any compensating tax (NOT GROSS RECEIPTS TAX) previously paid on construction materials and services incorporated into the construction project (7-9-79).

The credit must be taken for the same report period in which the gross receipts tax is paid. Use the *Special Contractor's Report for Compensating Tax Credit* (ACD-31077) to compute the credit and attach the form to the CRS-1 Form with the schedule of computation.

Forms for claiming the above credits and further information on the credits may be obtained from the Department's local tax offices or the Santa Fe headquarters. Contact information for those offices is contained on the last page of this publication, under "For Further Assistance".

High-Wage Jobs Tax Credit

Eligible employers can claim a credit equal to 10% of wages and benefits for new employees in "high-wage, economic-base" jobs. The law limits the credits to \$12,000 per eligible employee for up to four years. More than 50% of sales must be to persons outside New Mexico, and the employer must be eligible for in-plant training assistance. Other conditions: the jobs must be created between July 1, 2004,

and June 30, 2014, be occupied for at least 48 weeks of the year before the credit claim, and pay at least \$40,000 annually if located in a municipality of 40,000 or more residents and at least \$28,000 elsewhere in the state.

An “eligible employer” means an employer who: (1) made more than 50% of its sales to persons outside New Mexico during the most recent twelve months of the employer's modified combined tax liability reporting periods ending prior to claiming a high-wage jobs tax credit, and (2) is eligible for development training program assistance pursuant to Section 21-19-7 NMSA 1978; The definition of “benefits” refers to federal law. Excluded from eligibility are persons who have worked as employees or independent contractors for companies that own stock of the company applying for the credits.

Sale of Service For Resale Tax Credit

Any taxpayer who purchases a service for resale in the ordinary course of business when the receipts from the resale are not subject to gross receipts or governmental gross receipts tax may claim a credit against the taxpayer's gross receipts tax liability. The buyer must give the seller documentation that the service is being purchased for resale in the ordinary course of business.

If a taxpayer's business location is within a municipality, the amount of the new credit is 10% of the receipts from sales of services for resale multiplied by 3.775%. If the taxpayer's business location is in the unincorporated area of a county, the amount of the new credit is 10% of the receipts from sales of services for resale multiplied by 5%.

This credit does not apply to receipts from selling a service to a governmental entity or to a prime contractor who operates a facility in New Mexico designated as a national laboratory by an act of congress.

Research and Development Small Business Tax Credit

Qualified research and development small businesses are able to claim this credit equal to the sum of all gross receipts, compensating or withholding taxes owed to New Mexico for a reporting period. A qualified research and development small business is a corporation, general partnership or similar entity with fewer than 25 employees, revenues less than \$5 million per year and qualified research expenditures equal to 20% of total expenditures in the year the credit is claimed. This credit can be claimed from July 1, 2005, through June 30, 2009.

Businesses claiming this credit must still report the original tax liability on the CRS-1 Form.

Affordable Housing Tax Credit

The Mortgage Finance Authority (MFA) is authorized to issue investment vouchers for persons investing in affordable housing projects at the rate of 50% of the investment. The vouchers, which may be sold or transferred, may be applied against gross receipts, compensating, withholding, personal income or corporate income tax liabilities. Unused credits may be carried forward for up to five years. The MFA is required to adopt rules for the approval, issuance and administration of the vouchers.

Hospital Credit

Hospitals licensed by the New Mexico Department of Health may claim a gross receipts tax credit equal to the following percentage of taxable gross receipts:

For hospitals located in a municipality:

- 0.755 percent on or after July 1, 2007 and before July 1, 2008;
- 1.51 percent on or after July 1, 2008 and before July 1, 2009;
- 2.265 percent on or after July 1, 2009 and before July 1, 2010;
- 3.02 percent on or after July 1, 2010 and before July 1, 2011, and
- 3.775 percent on or after July 1, 2011.

For hospitals located in the unincorporated areas of a county:

- 1 percent on or after July 1, 2007 and before July 1, 2008,
- 2 percent on or after July 1, 2008 and before July 1, 2009,
- 3 percent on or after July 1, 2009 and before July 1, 2010,
- 4 percent on or after July 1, 2010 and before July 1, 2011, and
- 5 percent on or after July 1, 2011.

For purposes of this credit a “hospital” means a facility providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery or obstetrics and includes a facility licensed by the Department of Health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital and special hospital.

Biodiesel Blending Facility Tax Credit

A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act could claim a gross receipts and/or compensating tax credit equal to 30 percent of the cost of purchasing or installing biodiesel blending equipment. The credit could not exceed \$50,000 for equipment installed at one facility. Taxpayers would apply to the Energy, Minerals and Natural Resources Department which would issue a certificate of eligibility if the taxpayer and their expenditures meet the requirements of the section. Eligible taxpayers would then provide the certificate of eligibility to the Taxation and Revenue Department in order to claim the credit. Approved claims for all taxpayers in one year cannot exceed \$1 million. Credit amounts in excess of a liability can be carried forward for four years. If a credit claimant ceases biodiesel blending without completing at least 180 days of availability of the facility within the first 365 days of issuance of the certificate of eligibility, any amount of approved credit not applied would be extinguished. Taxpayers would be required to file amended returns and self-assess the tax owed and return any tax credit received within 425 days of the date of issuance of the certificate.

Unpaid Doctor Services

Licensed medical doctors or licensed osteopathic physicians may claim a credit against gross receipts taxes due for the value of unpaid bills for medical care services performed while on call to a hospital. The value of qualified health care services cannot exceed 130 percent of the reimbursement rate for the services under the Medicaid program. The credit can only be taken if the medical services performed remains unpaid one year after the date of billing and the licensed medical doctor or licensed osteopathic physician has reason to believe it will not be paid because: 1) health insurance did not cover the client or the medical services; 2) the client was not eligible for Medicaid, and 3) the charges are not reimbursable under the Indigent Hospital and County Health Care Act. The proposed credit would be phased in over three years, one-third available from July 1, 2007, through June 30, 2008, two-thirds available from July 1, 2008, through June 30, 2009, and the full amount July 1, 2009, and thereafter.

Advanced Energy Tax Credit

Interest owners may claim a the advanced energy tax credit in the amount of 6 percent of their expenditures for the development and construction of a new solar thermal electric generating facility or a

new or re-powered coal-based electric generating unit and an associated coal gasification facility. Qualified facilities would have to begin construction no later than December 31, 2015. To be eligible, a coal-based generating unit would also need to meet the following criteria:

1. Emit the lesser of (1) what is achievable with the best available control technology, or (2) .035 pounds per million British Thermal Units (“mm Btu”) of sulfur dioxide, .025 pounds per mm Btu of oxides of nitrogen and .01 pound per mm Btu of total particulates in the flue gas.
2. Remove the greater of (1) what is achievable with the best available control technology, or (2) 90 percent of the mercury emitted from the input fuel.
3. Capture and sequester or control carbon dioxide emissions so that by the later of January 1, 2017 or 18 months after commercial operation date no more than 1,100 pounds per megawatt-hour of CO₂ is emitted into the atmosphere.
4. All infrastructure required for sequestration is in place by the later of January 1, 2017 or 18 months after the commercial operation date.
5. Include methods and procedures to monitor the fate of the CO₂ captured and sequestered from the facility.
6. Does not exceed 700 net megawatts nameplate capacity.

To claim the credit, the interest owner would submit to the Taxation and Revenue Department a certificate issued by the New Mexico Environment Department which certifies that the facility is qualified for purposes of the credit. Approved credits could be claimed against a taxpayer’s gross receipts tax, compensating tax or withholding tax liability. If the credit amount exceeded the taxpayer’s liability, the excess could be carried forward for up to five years. The aggregate amount of tax credit that could be claimed with respect to each facility would be \$60,000,000. If a facility that had received certification did not sequester or control CO₂ emissions, the certification shall be revoked and the taxpayer would be required to refund to the state any tax credits already granted for that facility. If the taxpayer demonstrates to the Environment Department that the taxpayer made every effort to sequester or control CO₂ emissions, and that their inability to meet the sequestration requirements was beyond their control, the Environment Department will determine the amount of the credits that shall be refunded. The refund would be required within 180 days of the order by the Environment Department. Expenditures for which a taxpayer claims a credit would be ineligible for credits under the Investment Credit Act or any other credit against gross receipts, compensating or withholding taxes.

Alternative Energy Products Manufacturing Tax Credit

A new tax credit is created for up to 5% of a taxpayer’s spending on manufacturing equipment used in a manufacturing operation that produces “advanced energy products.” Advanced energy products are defined as vehicles powered by advanced energy sources, fuel-cell systems, renewable-energy systems and any components of these as well as components of integrated gasification combined cycle coal facilities and facilities related to the sequestration of carbon from integrated gasification combined cycle coal plants. Renewable energy systems are defined to include systems based on photovoltaic energy, solar-thermal energy, biomass energy, wind energy, hydrogen and battery cells. “Qualified expenditure” would be limited to the value of manufacturing equipment for which the credit is being claimed. The tax credit can be claimed against the taxpayer’s gross receipts tax, compensating tax, withholding tax, interstate telecommunications gross receipts tax, telecommunications relay surcharge and E-911 surcharge liabilities but cannot be claimed against local option gross receipts taxes. If the amount of the credit exceeds a taxpayer’s liability, the excess can be carried forward for up to five years. To be eligible to claim a credit the taxpayer shall employ at least one new full-time employee for every \$500 thousand of expenditures up to \$30 million, and at least one new full-time employee for every \$1 million of expenditures over \$30 million. Credits must be applied for within one year of making a qualified expenditure. If a taxpayer ceases operations at a facility for at least 180 days within a two-year period after claiming credits, no additional credits will be granted with regard to that facility. Amounts of credit

approved but not yet claimed would be extinguished and the taxpayer would owe the amount of tax that the claimed credits had offset.

Credit for Penalty Pursuant to Section 7-1-71.2 NMSA 1978

Taxpayers who paid a penalty pursuant to Section 7-1-71.2 NMSA 1978 prior to July 1, 2007, may claim a credit for the penalty amount paid. The credit must be claimed prior to July 1, 2010, and can be applied against the taxpayer's gross receipts, compensating or withholding tax liability within a report period. Any credit amount that exceeds a taxpayer's liability for a report period can be carried forward for up to three years.

HOW AND WHEN TO REPORT AND PAY CRS TAXES

You should report gross receipts, compensating and withholding taxes using the CRS-1 Form. The CRS-1 Form and tax are due on the 25th of the month following the end of your reporting period. If the 25th falls on a Saturday, Sunday or legal holiday, the CRS-1 Form is due the next business day. We look at the United States Postal Service postmark or time stamp of a qualifying courier service (currently designated by the United States Secretary of the Treasury under 26 USCA 7502) on the envelope to determine if a report was filed on time. A CRS-1 Form must be filed whether or not any tax is due. If no tax is due, file a "zero" report. **Please do not mail cash.**

If You Owe \$25,000 or More

If your combined tax liability for gross receipts, compensating, withholding, governmental gross receipts, leased vehicle gross receipts and interstate telecommunications gross receipts taxes and leased vehicle surcharge averaged \$25,000 or more per month for the previous calendar year (regardless of the tax due for the current month), statute requires your payment in usable funds by the tax-due date. You may choose one of several special payment methods to make the payment, but you must make your payment by the due date appropriate for the method you choose. For the mechanics of the choices and more detailed information, please request "FYI-401" from your local district tax office or view it online: www.tax.state.nm.us/.

IMPORTANT: Check the appropriate box on your CRS-1 Form for payment by automated clearinghouse or federal wire transfer. Your CRS-1 Form must be mailed on or before the due date, or penalty will be assessed at 2% per month, up to 20%, of the amount of tax due, even if payment has been made in a timely fashion.

Effective January 1, 2001, taxpayers who pay electronically will have a five-day grace period (for penalties only) to correct the transmission if payment identified to the taxpayer reaches the Department or its fiscal agent but otherwise lacks required information.

Reporting Periods

Monthly Filing

A monthly filing period is assigned when you register with the Department unless you qualify for and request either a quarterly or semi-annual filing period. Monthly reporting periods are from the first day of the month to the last day of the month; i.e., January 1 through January 31. New businesses whose start-business date is after the first of the month should still use the first day of the month to the last day of the month as the report period.

Requesting or Changing from Monthly to Quarterly or Semi-Annual Filing

If you are on a monthly filing basis and your combined total tax due averages \$200 a month or less, you may apply with the Department to file either quarterly or semi-annually. File the *Business Tax Registration Update* (ACD-31075) (included in the CRS-1 Filer's Kit or online at www.tax.state.nm.us/). Until you receive notification that you have been approved to file quarterly or semi-annually, you must continue to file monthly. Your approval will be effective at the beginning of the next quarterly or semi-annual period. If you are approved for quarterly reporting in February, you would continue to file monthly CRS-1 Forms for February and March; your first quarterly report would be for April through June. If you are approved to file on a quarterly or semi-annual basis and your tax liability exceeds the \$200-a-month average for any 12-month period of time, you are required to convert to a monthly filing basis.

Quarterly Filing

Quarterly reporting periods are January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

Semi-Annual Filing

Semi-annual reporting periods are January 1 through June 30 and July 1 through December 31.

Calculating Late-Filing Penalty and Interest

If you file your CRS-1 Form anytime after the due date, you should add penalty and interest to the amount of tax due. Penalty is 2% per month or partial month the payment is late up to a maximum of 20% of tax due or a minimum of \$5.00. When you are late filing your CRS-1 Form and you owe no tax, you still owe a \$5.00 penalty. Interest is calculated at a rate of 4%*. For report periods after January 1, 2001, interest is calculated on a daily basis using the following formula:

$$\text{Tax Due} \times .010958904\% \times \text{Number of Days Late} = \text{Interest Due}$$

No interest is due if, at the time of payment, interest due is less than \$1.00. Unlike penalty which has a 20% maximum, interest continues to accrue until you make payment.

* **NOTE:** This is the interest rate in effect for the second quarter of 2010. The interest rate is set by the U.S. Internal Revenue Code (IRC) and can change on a quarterly basis. For current quarterly and daily interest rate visit our web site at www.tax.state.nm.us/.

Your return must be postmarked by the United States Postal Service or time stamped by a qualifying courier service (currently designated by the United States Secretary of the Treasury under 26 USCA 7502) or received on or before the due date, or penalty will be assessed even if payment has been made in a timely fashion.

Special Penalties for Incorrectly Reporting the Deductions Under Sections 7-9-92 & 93 NMSA 1978

The 2004 Legislature enacted a new section of the Tax Administration Act that sets penalties for taxpayers who do not correctly report the amount eligible for new food or medical deductions. As originally enacted, the penalty is the difference between the reported deduction amount and the correct

amount multiplied by twice the applicable local option tax rates. *It applies to understating this deduction as well as overstating it.* This special penalty does **not** apply if a taxpayer chooses not to deduct qualified receipts. This penalty is *in addition to* other applicable penalties.

Effective July 1, 2007, the double local option tax penalty for failure to correctly report the amount of gross receipts tax on food and medical services was repealed. Taxpayers who paid the double local option tax penalty since it was first imposed on January 1, 2005, can claim a credit by July 1, 2010, equal to the amount of the penalty paid. The credit can be applied against gross receipts, compensating or withholding tax liability and any credit that exceeds a taxpayer's liability can be carried forward for up to three years. Please visit the Department's website at www.tax.state.nm.us/ or call your local district tax office for additional information on how to claim this credit.

Applying for a Refund

If you find you have overpaid gross receipts, compensating, withholding, governmental gross receipts, leased vehicle gross receipts or interstate telecommunications gross receipts tax, or leased vehicle surcharge, the procedure to follow to apply for a refund is as follows:

1. Amend the CRS-1 Form for the period or periods in which you overpaid (see below for the procedure to amend a report).
2. Complete the *Application for Tax Refund* (RPD-41071) included in the CRS-1 Filer's Kit or online at www.tax.state.nm.us/. On the form state the amount and type of tax you overpaid and the reason for overpayment. The most common reason for overpayment is neglecting to claim an exemption or deduction to which you are entitled. Be sure to include documentation to support your claim for refund.

You can apply for a refund up to three years after the end of the year in which the payment was due; *i.e.*, if you overpaid on the December 2006 report, you have until December 31, 2010, to apply for a refund of the overpaid amount because that report was due January 25, 2007.

◆ **NOTE:** If the Department denies your claim for refund in whole or in part, you may file a protest with the Department within 90 days of either mailing or delivery of the denial or file a lawsuit in Santa Fe District Court. If the Department does not take action on your claim within 120 days of receiving your claim, you may either refile it if you are within the three-year statute of limitation, or you may file a protest within 90 days from the expiration of the 120 days after you filed the claim with the Department. For more information on your remedies, please request FYI-402 from your local district tax office or view it online at www.tax.state.nm.us/.

◆ **NOTE:** Claims for refund of tribal taxes are to be filed with the Department but will be decided by the tribal taxing authority.

Amending the CRS-1 Form

If after filing a CRS-1 Form you find that information supplied on that form was incorrect, you should submit an amended form. When amending the CRS-1 Form, be sure to check the "amended report" box and write in the tax period you are amending. Fill out the form with the information as it should have been filed originally. If you underpaid, be sure to include payment for the difference between what you paid and what you owe. Add penalty and interest on the underpaid amount. If you voluntarily amend a CRS-1 Form (*i.e.*, without receiving an assessment) within 12 months of the original filing of a return and pay any additional tax due, you will not be subject to penalty, but interest will be due.

ACCOUNT NOTICES

While you are a registered CRS taxpayer, you may at some point receive one of the following account notices from the Department. Here is a description of them:

Assessment

We issue an assessment for tax, penalty and interest due. The most common reasons for which the Department issues an assessment are:

1. Taxpayer did not include payment with the CRS-1 Form.
2. Taxpayer paid tax at the incorrect rate. Always check the tax rate for your business location on the tax rate schedule as rates may change in January and July of each year.
3. Taxpayer filed the CRS-1 Form late without adding penalty and interest for late filing.
4. The Department audited the taxpayer's books and records and discovered unreported receipts or disallowed deductions.

Occasionally the Department will issue an assessment due to a Department encoding error. In these cases the taxpayer has written a check for the correct amount but the Department encoded the check for the incorrect amount. For example, a check written for \$100.00 may be encoded for \$10.00. The Department then receives only \$10.00 from the taxpayer's bank. On the bank statement, the taxpayer should verify that the bank paid the lesser amount, pay the principal amount of the assessment, and enclose a copy of the check showing the Department's encoding error. The Department will then abate the penalty and interest amounts on the assessment.

◆ **NOTE:** The Department will issue assessments to non-members of the Santa Clara, Santa Ana, Nambe, Laguna, Pojoaque, Sandia, Cochiti, Kewa, Ohkay Owingeh, Taos, and Picuris Pueblos and the Jicarilla Apache Nation with, and on behalf of, the Pueblos and Nation with respect to the tax imposed by these entities. Tribal officials must approve any abatement, closing agreement or installment agreement associated with the assessment.

Notice of Billing

We issue Notices of Billing the month after issuing an assessment if we have not received payment for that assessment.

◆ **NOTE:** If you receive an assessment, pay it and then receive a Notice of Billing, don't panic. Your payment probably was not processed in time to clear your account. If you receive a second Notice of Billing for that same assessment, you should contact your local district tax office (see FOR FURTHER ASSISTANCE on page 49).

Non-Filer Notice

We issue a Non-Filer Notice to a taxpayer with an active ID number who has not filed a CRS-1 Form for a report period. New Mexico statute requires taxpayers with active ID numbers to file for each reporting period whether or not they have any receipts.

◆ **NOTE:** To clear your account of non-filed periods, file CRS-1 Forms for all non-filed periods. If you are no longer in business, you should cancel your ID number as of the date your business closed using the *Business Tax Registration Update* (ACD-31075) included in the CRS-1 Filer's Kit or online at www.tax.state.nm.us/.

Provisional Assessment

Under the automated collection system, the Department can issue Provisional Assessments after we issue a Non-Filer Notice. The amount of the assessment may be based on past amounts paid, or an amount based on industry comparables for the taxpayer's type of business as reported on the registration application.

Notification of Overpayment

We issue Notifications of Overpayment to taxpayers whose accounts show a credit of at least \$25. Occasionally the Department will issue a Notification of Overpayment due to a Department encoding error. In these cases the taxpayer has written a check for the correct amount but the Department encoded the check for the incorrect amount. For example, a check written for \$10.00 may be encoded for \$100.00. The Department then receives \$100.00 from the taxpayer's bank. To recoup the overpayment, the taxpayer should complete the *Application for Tax Refund* (RPD-41071), included in the CRS-1 Filer's Kit or online at www.tax.state.nm.us/, and enclose a copy of the relevant bank statement so the Department can verify that the bank paid the higher amount.

NEW MEXICO TAXPAYER BILL OF RIGHTS

Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-9-4.1 through 7-1-4.3 NMSA 1978:

- The right to available public information and prompt and courteous tax assistance;
- The right to representation and advice by counsel or other qualified representatives at any time during your interactions with us according to provisions of Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Section 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Section 7-1-24 NMSA 1978;
- The right to have your tax information kept confidential unless otherwise specified by law in Sections 7-1-8.1 through 7-1-8.10 NMSA 1978;
- The right to abatement of an assessment of taxes incorrectly, erroneously or illegally made (Section 7-1-28 NMSA 1978) and a right to seek a compromise of an asserted tax liability. When the Secretary of Taxation and Revenue in good faith doubts that you owe us what we claim you owe, you also have the right to seek a compromise if one exists in your particular case (Section 7-1-20 NMSA 1978);

- The right to clear information of the consequences if a tax assessment is not paid, secured, protested or otherwise provided for according to Section 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to apply to pay your tax obligations by installment payment agreements according to the provisions of Section 7-1-21 NMSA 1978).

Confidentiality Provisions:

Statutes regulating the confidentiality of your taxes continue to be strict. The Legislature included language in Section 7-1-8.2 NMSA 1978 requiring the Department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to Section 7-1-24 NMSA 1978 may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record. The Department may make known to the Gaming Control Board the tax returns of license applicants and their affiliates.

Audit Provisions:

We must provide you with written, dated notice that an audit is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the Department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the Department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with Department requests and the Department has not acted on the audit.

Administrative Hearing Procedures:

A Department hearing officer may not engage as an employee in enforcing or formulating general tax policy other than to conduct hearings. You may request the Secretary to determine if a hearing officer's activities have affected his or her impartiality, and the Secretary may assign the case to another hearing officer. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The Secretary may appoint another hearing officer if that occurs. You may request a written ruling on any contested question of evidence in matters in which you have filed a pending written protest. You also may request that two or more protests on related issues be combined and heard jointly, and the hearing officer shall grant the request unless it creates an unreasonable burden on the Department.

Credit Claims:

The Department has 180 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. The Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the Department does not offset a refund or credit against your other tax liabilities within the prescribed time. The Department may make a direct refund of overpaid taxes to the taxpayer without requiring the taxpayer to file a refund claim. The Department does not have to pay interest on credits or refunds if it applies the amount to a tax interception program, to an estimated payment, or to offset prior liabilities of the taxpayer.

Awarding of Costs and Fees:

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you will receive a judgment or a settlement for reasonable administrative costs connected to the action.

Penalty:

The Department may not assess penalty against you if you fail to pay tax when due because of a mistake of law made in good faith and on reasonable grounds. If the Secretary determines that it is unfair to hold a spouse or former spouse liable for payment of unpaid taxes, the Secretary may decline to take action against the spouse or former spouse of the person who actually owes the tax. In extreme cases of delinquency under Section 7-1-53 NMSA 1978 the Department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.

TAXPAYER REMEDIES

Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act or the denial of, or failure to either allow or deny, a claim for refund by filing with the Secretary a written protest. Every protest shall identify the tax or taxes involved and state the grounds for the protest and the relief requested.

Any protest by a taxpayer shall be filed within 30 days of the date of the mailing of the assessment, or mailing to, or service on, the taxpayer of other notice or demand, or the date of mailing or filing a return. Under certain circumstances, the Department may grant a 60-day extension of time to file a protest.

◆ **NOTE:** A Notice of Billing may not be protested. A protest must be made within 30 days of the date of mailing of the assessment.

◆ **NOTE:** Protests by non-members of the Santa Clara, Santa Ana, Nambe, Sandia, Laguna, Pojoaque, Cochiti, Kewa, Ohkay Owingeh, Taos, and Picuris Pueblos and the Jicarilla Apache Nation of the tribal tax are to be filed with the Department but the tribal taxing authority for the tribes will decide them.

For more detailed information on protest procedures and other taxpayer remedies, request publication FYI-402: TAXPAYER REMEDIES (also available online: www.tax.state.nm.us/) or contact the Protest Office, P.O. Box 1671, Santa Fe, NM 87504-1671, (505) 827-9806.

RESPONSES TO COMMON QUESTIONS AND CONCERNS OF CRS TAXPAYERS

I didn't receive my CRS-1 Forms in the mail!

It is the taxpayer's responsibility to obtain forms. If the filing deadline is approaching or has arrived and you do not have a current CRS-1 Form, you can file online at <https://efile.state.nm.us/uls/default.aspx>. If filing online is not an option that works for you, you should file using an old CRS-1 Form. The most common reason taxpayers do not receive their forms in the mail is they have changed their address without notifying the Department. File a *Business Tax Registration Update Form* (ACD-31075) to notify us of any address change. The Business Tax Registration Update is included in the CRS-1 Filer's Kit. Blank CRS-1 Forms and the *Business Tax Registration Update Form* (ACD-31075) are available at your local district tax office and online: http://www.tax.state.nm.us/trd_form.htm

I overpaid in one report period. Can I take a credit for the overpayment on a subsequent report?

No. You must amend your CRS-1 Forms for the period in which you overpaid and apply for a refund. See procedures for requesting refunds and amending CRS-1 Forms beginning on page 40.

How do I separate (“back out”) gross receipts tax from total gross receipts?

See the following examples of how to separate the gross receipts tax:

- 1) To separate tax from total receipts at the end of the report period, first subtract deductible and exempt receipts, and then divide total receipts including the tax for the report period by one plus the applicable gross receipts tax rate. For example, if your tax rate is 5.5% and your total receipts including tax are \$1,055.00 with no deductions or exemptions, divide \$1,055.00 by 1.055. The result is your gross receipts without tax (to enter in Column E of the CRS-1 Form) or \$1,000.
- 2) If your tax rate is 5.5%, and your total gross receipts including tax are \$1,055.00, and included in that figure are \$60 in deductions and another \$45 in exemptions:
 - a) Subtract \$105 (the sum of your deductions and exemptions) from \$1,055. The remainder is \$950. This figure still includes the tax you have recovered from your buyers.
 - b) Divide \$950 by 1.055 (1 plus the 5.5% tax rate). The result is \$900.47.
 - c) In Column E enter the sum of \$900.47 plus \$60 (the amount of deductible receipts)*, or \$960.47. This figure is your gross receipts excluding tax.

*Unlike exemptions, deductions must be reported on the CRS-1 Form and therefore must be included in the amount reported in Column D and then listed separately in Column E.

Information on exemptions and deductions begins on page 7.

How do I get a copy of my registration or past CRS-1 Forms?

You must make the request in writing and include your ID number and current address. Be sure to sign the request. Allow 6 to 8 weeks for us to process the request. You may also review your account history by using the Taxpayer Access Point at <https://tap.state.nm.us/>.

Why do I get so much mail from the Department?

Many of the Department's billings are computer-generated and sent out automatically, so it's possible that your payment and our notices have "crossed" in the mail. Sometimes, by the time we receive payments, it's too late to prevent the next round of computer-generated letters from going out. Call your local tax office to confirm the status of your account or review your account history at <https://tap.state.nm.us/>.

How long am I required to retain my CRS records?

New Mexico statute permits the Department to assess back 10 years, depending on the situation. The normal assessment period is three years back from the end of the year the tax was due. If you have under-reported any one tax on the CRS-1 Form by more than 25%, the Department may assess back six years. If you have nonfiled reports, the Department may assess back seven years. If there is evidence of tax fraud, the Department may assess back 10 years.

If I currently have an identification number from the Taxation and Revenue Department as a registered proprietorship (i.e. sole owner) and later decide to incorporate, may I continue to use this number?

No. You must cancel the identification number issued to you as a proprietorship and apply for a new identification number as a corporation. The incorporation of a business qualifies as a change in form of ownership. Upon applying for your identification number, you should indicate your date of incorporation as the "start business date" on the *Application for Business Tax Identification Number* (ACD-31015) for the new number.

When I am issued a new identification number, what are my NTTC (nontaxable transaction certificate) requirements when: 1) I execute NTTCs to my vendors and 2) I receive NTTCs from my customers?

- 1) Under your new identification number, apply for new NTTCs and execute them with your vendors.
- 2) For transactions after you are issued a new identification number all NTTCs you receive from your customers should reflect your new identification number. Maintain all NTTCs you have previously received in case you need to provide documentation to support any deductions taken before your identification number changed.

You should return to the Department or destroy any unused NTTCs issued by the Department to you under your old identification number.

I have previously filed my CRS-1 Form online and wish to do so again but I have forgotten my password. What should I do?

On the login screen of the CRS-WebFile system select "Forgotten Password Help". The system will ask you a series of security questions and then provide you with your password.

How do I file my CRS-1 Forms online?

You can access our CRS-1 Form online filing program by following the steps below:

- **Go** to the Taxation and Revenue Department's web site at www.tax.state.nm.us/.
- **Click** on "Electronic Services".
- **Choose** "Electronic Tax Services" and then "CRS Internet Filing". The prompts will lead you through the login and filing process.
- **Note:** you must have a valid CRS Identification Number that has been entered into the Department's computer system.

I have attempted to file my CRS-1 Form electronically and have received an error. Whom do I contact to resolve this?

Please contact our CRS Unit at (505) 827-0832 or our E-Commerce Unit by e-mail at NMWebFile@state.nm.us.

When I file my CRS-1 Form electronically do I have to pay right away?

No. You can choose to file your CRS-1 Form electronically and at a later time submit payment to the Department by mail. Be aware that all due dates remain the same whether you file electronically or not.

What options do I have when paying my CRS taxes online?

When filing your CRS-1 Forms online you can pay your tax using one of the following options:

- Payment by credit card (VISA, American Express and MasterCard only) *
- Payment by electronic check
- Payment by an approved special payment method. (For more information on special payment methods and due dates, request FYI-401 from your local district tax office or view it online at www.tax.state.nm.us/, select “publications”.

* A 2.49% credit card service fee will be imposed on all credit card payments made. This credit card service fee is imposed on the credit card holder by the credit card company. There are no additional charges when using other types of payment.

Can I file an amended return online?

No. At this time our online system cannot process an amended return. You should file any necessary amendments by filing a paper CRS-1 Form. (See procedures for amending a return on page 40).

Our phone number and e-mail address of record have changed. How do we make these changes for online filing?

You can make these changes by editing your profile using the CRS-WebFile system. To edit your profile, enter your CRS Identification Number on the logon screen and click on registered user. On the next screen page you will see an option to *Edit Your Profile*. Make this selection and follow the instructions provided.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.state.nm.us>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the department is not required to issue a ruling when requested to do so, every request is carefully considered.

The department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the department's web page free of charge at www.tax.state.nm.us. Click on "publications."

Public Decisions & Orders. All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the department's web page free of charge at www.tax.state.nm.us. Click on "publications."

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the Department's taxes, programs and forms and specific information about your filing situation.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225

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